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सं. 36] नई दिल्ली, सितम्बर 2—सितम्बर 8, 2012, शनिवार/भाद्र 11—भाद्र 17, 1934
No. 36] NEW DELHI, SEPTEMBER 2—SEPTEMBER 8, 2012, SATURDAY/BHADRA 11—BHADRA 17, 1934

भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृष्ठक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विधि एवं न्याय मंत्रालय

(विधायी विभाग)

नई दिल्ली, 18 जून, 2012

क्र. आ. 2782.—सूचना का अधिकार अधिनियम, 2005 (2005 का 22) की धारा 5 की उपधारा (2) के अनुसरण में और भारत सरकार, विधि एवं न्याय मंत्रालय (विधायी विभाग) की अधिसूचना सं. का. आ. 2522 (अ) दिनांक 09 नवंबर, 2011 के अतिक्रमण में विधायी विभाग एतद्वारा इस विभाग में कार्यरत श्री आर. एस. जयकृष्णन, सहायक विधायी परामर्शी (मलयालम) को इस विभाग के लिए उक्त अधिनियम के प्रयोजनार्थ तत्काल प्रभाव से केन्द्रीय सहायक लोक सूचना अधिकारी पदनामित करता है।

[फा. सं. ए-45011/4/2005-प्रशा.1(वि.वि)]

एम. आर. बीर, निदेशक (प्रशासन)

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 18th June, 2012

S. O. 2782.—In pursuance of sub-section (2) of Section 5 of the Right to Information Act, 2005 (22 of 2005) and in supersession of the Government of India in the

Ministry of Law and Justice (Legislative Department) notification No. S.O.2522 (E) dated 9th November, 2011, the Legislative Department hereby designates Shri R.S. Jayakrishnan, Assistant Legislative Counsel (Malayalam), in the said Department as the Central Assistant Public Information Officer for the said Department for the purpose of the said Act with immediate effect.

[F. No. A-45011/4/2005-Admn.I (LD)]

M. R. BEERH, Director (Admn.)

गृह मंत्रालय

नई दिल्ली, 30 अगस्त, 2012

क्र. आ. 2783.—केन्द्रीय सरकार, राजभाषा (संघ के शसकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम 4 के अनुसरण में गृह मंत्रालय के निम्नलिखित कार्यालय में हिन्दी का कार्यसाधक ज्ञान रखने वाले कर्मचारियों की संख्या 80% से अधिक हो जाने के फलस्वरूप उसे एतद्वारा अधिसूचित करती है।

पुलिस उप-महानिरीक्षक का कार्यालय, रंगरूट-प्रशिक्षण-केन्द्र, केन्द्रीय रिजर्व पुलिस बल, राजगीर, बिहार।

[फा. सं. -12017/1/2012-हिन्दी]

अवधेश कुमार मिश्र, निदेशक (राजभाषा)

MINISTRY OF HOME AFFAIRS

New Delhi, the 30th August, 2012

S.O. 2783— In pursuance of sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purpose of the Union) Rules, 1976, the Central Government hereby notifies the following office of the Ministry of Home Affairs where the percentage of the staff having working knowledge has gone above 80%:

Office of the Deputy Inspector General,
Recruit Training Centre, CRPF, Rajgir, Bihar

[F. No. 12017/1/2012-Hindi]

AVADHESH KUMAR MISHRA, Director (OL)

कार्यिक, लोक शिकायत तथा पेंशन मंत्रालय
(कार्यिक और प्रशिक्षण विभाग)

नई दिल्ली, 29 अगस्त, 2012

का. आ. 2784.—केन्द्रीय सरकार एतद्द्वारा दण्ड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उप-धारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए दिल्ली उच्च न्यायालय में केन्द्रीय अन्वेषण ब्यूरो मामला आरसी 4 (एस)/1987-एससीयू-1/एससी-1/नई दिल्ली (ए. के. जाजोदिया और अन्य) के क्रिस्टल सरकारी गुप्त अधिनियम मामला) से उत्पन्न आपराधिक पुनरीक्षण आवेदन सं. 651/2010, 95/2012 तथा 120/2012 तथा इससे प्रासंगिक मामले या इससे संबंधित मामलों में प्रस्तुत होने कि लिए श्री हरिन पी. रावल, अपर महान्यायावादी को विशेष लोक अभियोजक के रूप में नियुक्त करती है।

[फा. सं. 225/15/2012-एवीडी-II]
राजीव जैन, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 29th August, 2012

S. O. 2784.—In exercise of the powers conferred by sub-section (8) of Section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri Harin P. Raval, Addl. Solicitor General as Special Public Prosecutor for appearing in CrI. Revision Petition Nos. 651/2010, 95/2010 and 120/2012 arising out of CBI Case RC 4 (S)/1987-SCU.1/SC.1/New Delhi (Office Secret Act case against A. K. Jajodia & others) in the Delhi High Court at New Delhi and any other matter connected therewith and incidental thereto.

[F. No. 225/15/2012-AVD-II]

RAJIV JAIN, Under Secy.**वित्त मंत्रालय**

(राजस्व विभाग)

(केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड)

नई दिल्ली, 29 अगस्त, 2012

का. आ. 2785.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम 4 के अनुसरण में राजस्व विभाग, केन्द्रीय उत्पाद शुल्क एवं सीमा शुल्क बोर्ड निम्नलिखित कार्यालय, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है :-

1. "मुख्य आयुक्त कार्यालय,
केन्द्रीय उत्पाद, सीमा शुल्क एवं सेवा कर,
मेरठ परिक्षेत्र,
चौ. चरण सिंह विश्वविद्यालय के सामने,
मंगल पांडे नगर,
मेरठ-250005 (उ. प्र.)"।

[फा. सं. ई-11017/1/2012-हिंदी-II]
चंद्र भान नारनाली, निदेशक (राजभाषा)

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF EXCISE AND CUSTOMS)

New Delhi, the 29th August, 2012

S. O. 2785.—In pursuance of sub-rule (4) of rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office of the Department of Revenue, Central Board of Excise & Customs, whereof more than 80% of the staff have acquired the working knowledge of Hindi.

"Office of the Chief Commissioner,
Central Excise, Customs and Service Tax,
Meerut Circle,
Opp. Ch. Charan Singh University,
Mangal Pandey Nagar,
Meerut-250005 (U.P.)"

[F. No. E-11017/1/2012-Hindi-II]

CHANDRA BHAN NARNAULI, Director (OL)

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 3 सितम्बर, 2012

का. आ. 2786.—भारतीय रिजर्व बैंक अधिनियम, 1934 (1934 का 2) की धारा 8 की उपधारा (1) के खंड (ग) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्द्वारा श्री वाई सी. देवेश्वर (जन्म तिथि : 04-02-1947) को उनकी नियुक्ति की अधिसूचना की तिथि से चार वर्षों की अवधि के लिए भारतीय

रिजर्व बैंक के केन्द्रीय बोर्ड में निदेशक के रूप में नामित करती है।

[फा. सं. 1/3/2011-बीओ-1]
विजय मल्होत्रा, अवर सचिव

(Department of Financial Services)

New Delhi, the 3rd September, 2012

S. O 2786.—In exercise of the powers conferred by clause (c) of Sub-Section (1) of Section 8 of the Reserve Bank of India Act, 1934, (2 of 1934) the Central Government hereby nominates Shri Y. C. Deveshwar (DoB: 04-02-1947), to be director on the Central Board of Directors of Reserve Bank of India for a period of four years from the date of notification of his appointment.

[F. No. 1/3/2011-BO-1]

VIJAY MALHOTRA, Under Secy.

आयकर विभाग

(मुख्य आयकर आयुक्त का कार्यालय)

मदुरै, 21 जून, 2012

निर्धारिती का नाम एवं पता :

मै. आनंदा एजुकेशनल ट्रस्ट,
आनंदा नगर,
देवकोट्टै।

पैन : एएबीटीए9789आर

आयकर अधिनियम, 1961 की धारा 10(23सी) (vi) के अधीन आदेश

का. आ. 2787.—मै. मुख्य आयकर आयुक्त, मदुरै आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खंड (23सी) के खण्ड (vi) के साथ पठित आयकर नियम, 1962 के नियम 2 सी द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए उपरोक्त खंड में बताए गए प्रयोजनों के लिए निर्धारण वर्ष 2011-12 से मै. आनंदा एजुकेशनल ट्रस्ट, देवकोट्टै को निम्नलिखित शर्तों के आधार पर अनुमोदन प्रदान करता हूँ :

2. (i) धारा 10 के खंड (23सी) के खण्ड (vi) के साथ पठित नियम 2 सी की अनुरूपता के साथ ट्रस्ट की गतिविधियां न्यास विलेख के अनुसार प्रामाणिक है और शर्त के अनुसार निर्धारिती शैक्षिक गतिविधियों में बिना किसी लाभ की दृष्टि से भाग लेगा।
- (ii) अधिनियम की धारा 10 (23सी) के तीसरे परन्तुक से अपेक्षित ट्रस्ट अपनी आय या जमा आय का प्रयोग केवल शैक्षिक प्रयोजनों, जिनके लिए उसकी स्थापना की गई है, के लिए पूर्णतः और अनन्यतः उपयोग करता है।
- (iii) ट्रस्ट गैर-धार्मिक, शैक्षिक सार्वजनिक धर्मार्थ ट्रस्ट है जो उक्त कॉलेज शैक्षिक प्रयोजनों के लिए चला रहा है नाकि

अन्य किसी उद्देश्य या लाभ के लिए।

- (iv) आयकर अधिनियम, 1961 की धारा 11 की उप-धारा (5) में विनिर्दिष्ट तरीकों में से किसी एक या अधिक रूपों या पद्धतियों में किसी भी अवधि के लिए निर्धारिती अपनी निधि से अन्यथा निवेशों या निक्षेपों (आभूषण एवं फर्नीचर या ऐसी वस्तु के रूप में प्राप्त और रखे गए स्वेच्छिक अभिलेख के अलावा) में निवेश अथवा जमा उपर्युक्त उल्लिखित निर्धारण वर्षों से संबंधित पूर्व वर्षों के दौरान किसी भी अवधि के लिए नहीं करेगा।
- (v) यह अनुमोदन किसी ऐसी आय के लिए लागू नहीं होगा जो कारोबार, व्यवसाय से लाभ और अधिलाभ प्राप्त होता है, जब तक कारोबार ट्रस्ट के लक्ष्यों की प्राप्ति के लिए है तथा ऐसे कारोबार के लिए असंग बहीखाता रखा जा रहा है।
- (vi) आयकर अधिनियम, 1961 के प्रावधानों के अनुरूप ट्रस्ट आयकर प्राधिकारी के समक्ष नियमितता से आय विवरणी फाइल करेंगे।
- (vii) इसके भंग होने पर उसके अधिशेष एवं आस्तियाँ ऐसे संगठन को दी जाएंगी जो पूर्णतः ऐसे ही प्रयोजनों के लिए है और लाभ के प्रयोजनार्थ नहीं हैं और आयकर अधिनियम, 1961 की धारा 13(3) में विनिर्दिष्ट अनुसार उसका कोई भी भाग प्रत्यक्ष रूप से संस्थान के हितप्रधिकारी या अन्य किसी को नहीं जाएगा।
- (viii) अधिनियम की धारा 10(23सी) के पंद्रहवें परन्तुक तथा धारा 115 बीबीसी के साथ पठित यह अनुमोदन अनाम संदानों के लिए लागू नहीं होगा।
- (ix) धारा 143(3) के परन्तुक के प्रावधानों के अधीन अनुमोदन स्वीकृत किया जाएगा।

3. यदि यह बात में पता लगता है कि अनुमोदन फर्जी या तथ्य के अन्यथा-कथन द्वारा सिद्ध किया गया है तो उसे शून्य माना जाएगा। अनुमोदन आयकर अधिनियम, 1961 की धारा 10(23सी)(vi) के प्रयोजन के लिए दिया गया है तथा अन्य किसी प्रयोजन के लिए नहीं और अनुमोदन वापस ले लिया माना जाएगा यदि निर्धारिती की गतिविधियां प्रामाणिक नहीं हैं या गतिविधियां स्वीकृत अनुमोदन में उल्लिखित सभी या किन्हीं शर्तों के अनुसार नहीं की जा रही हो।

[सी. सं. 2113/3/मु.आ./मदुरै/तक./2011-12]

डी. के. दास शर्मा, मुख्य आयकर आयुक्त

INCOME-TAX DEPARTMENT
(OFFICE OF THE CHIEF COMMISSIONER OF
INCOME-TAX)

Madurai, the 21st June, 2012

Name and Address of the Assessee :

M/s Ananda Educational Trust,
Ananda Nagar,
Devakottai.

PAN : AABTA9789R

**ORDER UNDER SECTION 10(23C)(vi) OF THE
INCOME TAX ACT, 1961**

S.O. 2787.— In exercise of the powers, conferred on me by virtue of sub-clause (vi) of clause (23C) of section 10 of the Income Tax, 1961 read with Rule 2C of the IT Rules, 1962, I, the Chief Commissioner of Income-tax, Madurai hereby accord approval to M/s. Ananda Educational Trust, Devakottai for the purpose of the said section from the assessment year 2011-12 subject to conditions, mentioned hereunder —

2. (a) the Trust shall conform to and comply with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income Tax Act, 1961 read with rule 2CA of the Income Tax Rules, 1962 and subject to the condition that the assessee will engage only in educational activities and that too without any profit motive;
- (b) the trust applies its income, or accumulates its income for application, wholly and exclusively, for the educational objects for which it is established and application of its income must be in accordance with Third Proviso to Section 10(23C) of the Act;
- (c) the trust is non-religions, educational public charitable trust running the above college for purely education purposes and not having any other object or profit motive.
- (d) the trust will not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture, etc.,) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11 of the IT Act, 1961;
- (e) this approval will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust and separate books of accounts are maintained in respect of such business;
- (f) the trust will regularly file its return of income before the Income-tax authority in accordance with the provisions of the Income tax Act, 1961;
- (g) that in the event of its dissolution, its surplus and assets will be given to an organization which exists solely for similar purposes and not for purposes of profit and no part of the same will go directly to any of the beneficiaries of the

institution or anybody specified in Section 13(3) of the Income Tax Act, 1961;

- (h) the approval shall not apply in relation to anonymous donations in terms of the fifteenth proviso to Section 10(23C) r.w.s. 115BBC of the Act;
- (i) the approval granted shall be subject to the provisions of proviso to Section 143(3);

3. The approval shall be void if it is subsequently found that it has been obtained by fraud or misappropriation of fact. This approval is given only for the purpose of Sec.10(23C)(vi) of the Income Tax Act, 1961 and not for any other purposes and the same is liable to be withdrawn if it is subsequently found that the activities of the assessee are not genuine or if they are not carried out in accordance with all or any of the conditions subject to which it was approved.

[C. No. 2113/3/CC/MDU/TECH/2011-12]

D. K. DAS SHARMA,
Chief Commissioner of Income Tax

(कार्यालय मुख्य आयकर आयुक्त)

जयपुर, 30 अगस्त, 2012

सं. 06/2012-13

क्र. आ. 2788.—आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 (1961 का 43वां) की धारा 10 के खंड (23सी) की उप-धारा (vi) के द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मुख्य आयकर आयुक्त, जयपुर एतद्वारा निर्धारण वर्ष 2011-12 एवं आगे के लिए कथित धारा के उद्देश्य से “मैनेजिंग कमेटी, एस. एस. जी. पारीक कालेज, जयपुर” को स्वीकृति देते हैं।

2. बशर्ते कि समिति आयकर नियम, 1962 के नियम 2 सी ए के साथ पठनीय आयकर अधिनियम, 1961 की धारा 10 के उप-खण्ड (23सी) की उप-धारा (vi) के प्रावधानों के अनुरूप कार्य करें।

[क्रमंक: मुआआ/अआआ/(मु)/जय/10(23सी)(vi)/2012-13/2822]

ब्रजेश गुप्ता, मुख्य आयकर आयुक्त

**(OFFICE OF THE CHIEF COMMISSIONER OF
INCOME-TAX)**

Jaipur, the 30th August, 2012

No. 06/2012-13

S. O. 2788.— In exercise of the powers conferred by sub-clause (vi) of clause (23C) of Section 10 of the Income-Tax Act, 1961 (43 of 1961) read with rule 2CA of the Income-tax Rules, 1962 the Chief Commissioner of Income-tax, Jaipur hereby approves “Managing Committee, S.S.G Pareek College, Jaipur” for the purpose of said Section from A. Y. 2011-12 and onwards.

2. Provided that the society conforms to and complies with the provisions of sub-clause (vi) of clause (23C) of Section 10 of the Income-tax Act, 1961 read with rule 2CA of the Income-tax Rules, 1962.

[No. CCIT/JPR/Addl. CIT(Hqrs.)/10(23C)(vi)/2012-13/2822]

BRIJESH GUPTA, Chief Commissioner of Income tax

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 20 जून, 2012

क्र. आ. 2789.—भारतीय चिकित्सा परिषद् अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार भारतीय चिकित्सा परिषद् से परामर्श करके एतद्वारा उक्त अधिनियम की प्रथम अनुसूची में अर्हता की नामावली में परिवर्तन होने के कारण निम्नलिखित और संशोधन करती है, नामतः—

उक्त अनुसूची में —

(क) “मान्यता प्राप्त चिकित्सा अर्हता” शीर्षक [इसके बाद कालम (2) के रूप में निर्दिष्ट] के अन्तर्गत “जिवाजी विश्वविद्यालय, ग्वालियर” के सामने “पंजीकरण” के लिए सक्षिप्त रूप [इसके बाद कालम (3) के रूप में निर्दिष्ट] शीर्षक के अंतर्गत अंतिम प्रविष्टि एवं उससे संबंधित प्रविष्टि के बाद निम्नलिखित को अंतर्विष्ट किया जाएगा, नामतः—

2	3
“प्रसूति एवं स्त्री रोग विज्ञान में डिप्लोमा”	डी.जी.ओ. (यह वर्ष, 1997 में अथवा उसके बाद जी.आर. मेडिकल कॉलेज, ग्वालियर, मध्य प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में जिवाजी विश्वविद्यालय द्वारा स्वीकृत किए जाने पर मान्यताप्राप्त चिकित्सा अर्हता होगी)।

सभी के लिए टिप्पणी :

1. स्नातकोत्तर पाठ्यक्रम को प्रदान की गई ऐसी मान्यता की अधिकतम अवधि 5 वर्षों के लिए होगी जिसके उपरान्त इसका नवीकरण कराना होगा।

2. उप-खंड (4) की आवश्यकता के अनुसार मान्यता को समय पर नवीकरण कराने में विफल होने के परिणामस्वरूप संबंधित स्नातकोत्तर पाठ्यक्रम में प्रवेश अनिवार्य रूप से बंद हो जाएंगे।

[सं. यू-12012/37/2012-एमई (पी-II)]

अनिता त्रिपाठी, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE
(Department of Health and Family Welfare)
New Delhi, the 20th June, 2012

S. O. 2789.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central

Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, due to change of nomenclature of the qualification namely:—

In the said Schedule -

(a) against “Jiwaji University, Gwalior” under the heading ‘Recognised Medical Qualification’ [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading ‘Abbreviation for Registration’ [hereinafter referred to as column (3)], the following shall be inserted, namely:—

2	3
“Diploma in Obstetrics & Gynaecology”	D.G.O. (This shall be a recognised medical qualification when granted by Jiwaji University in respect of students being trained at G.R. Medical College, Gwalior, Madhya Pradesh on or after 1997.

Note to all :

1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.

2. Failure to seek timely renewal of recognition as required in sub-clause-(4) shall invariably result in stoppage of admissions to the concerned Postgraduate Course.

[No. U-12012/37/20 12-ME(P-II)]

ANITA TRIPATHI, Under Secy.

पोत परिवहन मंत्रालय

नई दिल्ली, 6 सितम्बर, 2012

क्र. आ. 2790.—सरकारी स्थान (अप्राधिकृत अधिभोग्यों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार एतद्वारा भारतीय समुद्री विश्वविद्यालय (आईएमयू), कोलकाता परिसर के सहायक निदेशक (एमएस) और वित्त प्रभारी, श्री सी.ए. विश्वजीत भट्टाचार्य को उक्त अधिनियम के उद्देश्य से आईएमयू, कोलकाता परिसर द्वारा नियंत्रित सरकारी स्थान के मामले में सम्पदा अधिकारी नियुक्त करती है, और उक्त अधिकारी उक्त अधिनियम के द्वारा या उसके तहत सम्पदा अधिकारी को दी गई शक्तियों का प्रयोग करेगा और सौंपे गए कर्तव्यों का निष्पादन करेगा। उक्त नियुक्ति सरकारी राजपत्र में इस अधिसूचना के प्रकाशन की तारीख से प्रभावी होगी।

[मिसिल सं. एस टी-14011/20/2012-एम टी]

कंचन बाला हमजा, अवर सचिव

MINISTRY OF SHIPPING

New Delhi, the 6th September, 2012

S. O. 2790.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints Shri C.A. Biswajit Bhattacharyya, Assistant Director (MS) & Finance-in-Charge, Indian Maritime University (IMU)-Kolkata Campus as Estate Officer in respect of public, premises controlled by IMU Kolkata Campus for the purpose of the said Act, and the said officer shall exercise the powers conferred, and perform the duties imposed, on Estate Officer by or under the said Act. The said appointment shall come into effect from the date of publication of this Notification in the Official Gazette.

[F. No. ST-14011/20/2012-MT]

KANCHAN BALA HAMZA, Under Secy

श्रम और रोजगार मंत्रालय

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2791.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जयपुर थार ग्रामीण बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जोधपुर के पंचाट (संदर्भ संख्या 6/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-08-2012 को प्राप्त हुआ था।

[सं. एल-12012/01/2008-आईआर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 7th August, 2012

S. O. 2791.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2009) of the Industrial Tribunal Jodhpur as shown in the Annexure, in the industrial dispute between the management of Jaipur Thar Gramin Bank, and their workmen, received by the Central Government on 07-08-2012.

[No. L-12012/01/2008-IR (B-I)]

RAMESH SINGH, Desk Officer

अनुबन्ध

**औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय,
जोधपुर।**

**पीठासीन अधिकारी :—श्री एच.आर. नागौरी,
आर.एच.जे.एस. औद्योगिक विवाद (केन्द्रीय) संख्या :—6
सन् 2009**

श्री श्रवणकुमार जोशी पुत्र श्री रामेश्वरलाल जी जोशी
निवासी सी-169, शास्त्रीनगर, जोधपुर।

... प्रार्थी

बनाम

1. दी जनरल मैनेजर, जयपुर थार ग्रामीण बैंक 56, सरदार पटेल मार्ग, सी स्कीम, जयपुर।
2. दी रिजनल मैनेजर, जयपुर थार ग्रामीण बैंक 900/751, पाल रोड, जोधपुर।

... अप्रार्थीगण

उपस्थिति :—

(1) प्रार्थी के प्रतिनिधि—श्री गिरीश सांखला ... उपस्थित।

(2) अप्रार्थीगण के प्रतिनिधि श्री एन.आर. बुठानिया ... उपस्थित।

अधिनिर्णय

दिनांक : 15-11-2011

1. भारत सरकार के श्रम मंत्रालय ने अपनी अधिसूचना क्रमांक एल. 12012/01/2008-आईआर. (बी. 1) नई दिल्ली दिनांक 9-1-2009 के द्वारा निम्न विवाद अधिनिर्णय हेतु इस न्यायालय को प्रेषित किया गया है :—

“Whether the action of the management of Jaipur Thar Gramin Bank in terminating the services of Shri Sharwan Kumar Joshi S/o Shri Rameshwar Lal Joshi w.e.f. December, 2006 is legal and justified ? If not, to what relief he is entitled to ?”

2. प्रार्थी ने अपने माँग-पत्र में यह उल्लेख किया है कि प्रार्थी को दिनांक 1-12-2001 को क्षेत्रीय कार्यालय जोधपुर में क्षेत्रीय प्रबन्धक अप्रार्थी संख्या-1 की कार के ड्राइवर के पद पर नियुक्त किया गया। प्रार्थी को सेवा के प्रथम वर्ष में 2690 रुपये मासिक तथा एक वर्ष पश्चात् वेतन वृद्धि कर 2730 रुपये वेतन दिया गया। प्रार्थी का वेतन हर माह क्षेत्रीय कार्यालय अप्रार्थी संख्या-1 के द्वारा ही दिया जाता था। प्रार्थी एम्बेसेडर कार चलाता था। यह कार पुरानी हो जाने की वजह से इस कार को प्रधान कार्यालय, जयपुर को सुपुर्द करने के लिए प्रार्थी को दिनांक 23-11-2006 को भेजा गया। प्रार्थी द्वारा कार सुपुर्द करने के पश्चात् उसे वहाँ एक माह रखा गया और इसके बाद उसे मौखिक आदेश के द्वारा बिना कोई कारण बताये उसकी सेवाएं समाप्त कर दी। प्रार्थी ने यह भी उल्लेख किया है कि थार आंचलिक ग्रामीण बैंक का समायोजन जयपुर थार ग्रामीण बैंक में कर दिया गया है।

3. प्रार्थी ने यह उल्लेख किया है कि उसकी अप्रार्थी संस्थान में सेवाएं लगातार रही हैं। उसने वहाँ छः साल तक कार्य किया है। प्रार्थी को सेवा से पृथक् करने के पूर्व अप्रार्थी संस्थान ने औद्योगिक विवाद अधिनियम की धारा 25-एफ की पालना नहीं की है। प्रार्थी ने यह उल्लेख किया है कि कई निर्णयों में यह अधिनिर्णित किया गया है कि अधिकारी के घर कार्य करने वाला व्यक्ति उस संस्थान अथवा बैंक का कर्मचारी माना जायेगा। प्रार्थी ने यह उल्लेख किया है कि अप्रार्थी संस्थान ने उसे सेवा से पृथक् कर उसका शोषण किया है। अप्रार्थी संस्थान का यह कृत्य अनफेयर लेबर प्रैक्टिस की तारीफ में आता है। प्रार्थी ने उक्त आधारों पर यह प्रार्थना की है कि उसे सेवा

में पुनः नियुक्त किया जावे तथा उसकी सेवाएँ निरन्तर मानी जावे । इस दौरान उसे देय लाभ भी दिलाये जावें ।

4. अप्रार्थी ने अपने प्रत्युत्तर में यह उल्लेख किया है कि प्रार्थी की नियुक्ति तत्कालीन थार आंचलिक ग्रामीण बैंक में ड्राईवर के पद पर नहीं की गई थी । अप्रार्थीगण ने यह उल्लेख किया है कि वास्तविक तथ्य यह है कि विपक्षी बैंक के प्रायोजक बैंक युको बैंक द्वारा जारी परिपत्र संख्या एजीएम/डीएम/सर्कुलर नम्बर 5/86 दिनांक 30 अगस्त 1986 के द्वारा अधिकारियों को व्यक्तिगत उपचार हेतु कार की सुविधा दी गई । इस परिपत्र के अनुसार जिन अधिकारियों को बैंक का वाहन दिया गया था उन्हें अपनी पसंदानुसार अपना व्यक्तिगत वाहन चालक रखने की स्वीकृति दे दी गई । ऐसे वाहन चालकों को भुगतान संबंधित अधिकारी द्वारा नकद या अपनी स्वयं की जेब से किया जाता है तथा बैंक के नियमों के तहत संबंधित अधिकारी इसका पुनर्भुगतान मासिक आधार पर बैंक से प्राप्त करता है । इस परिपत्र के अनुसार सभी परिस्थितियों में ऐसे वाहन चालक संबंधित अधिकारी द्वारा व्यक्तिगत रूप से नियोजित माने जायेंगे । अप्रार्थीगण ने यह उल्लेख किया है कि उक्त सुविधा विपक्षी बैंक के अधिकारियों को प्रदान की गई थी । इस सुविधा के अन्तर्गत प्रार्थी को विपक्षी बैंक के प्रायोजक बैंक युको बैंक के परिपत्र सं. एचओसी/ एल/ पीओएस/ 02/04 दिनांक अप्रैल 8, 2004 के अनुसार दिनांक 1-4-2004 से थार आंचलिक ग्रामीण बैंक के अध्यक्ष द्वारा उनके व्यक्तिगत वाहन चालक के तौर पर रखा गया । अप्रार्थीगण ने इस तथ्य को अस्वीकार किया है कि प्रार्थी की नियुक्ति विपक्षी बैंक द्वारा की गई । प्रार्थी को विपक्षी बैंक के अध्यक्ष द्वारा अपनी व्यक्तिगत हैसियत के तौर पर वाहन चालक के रूप में रखा गया एवं भुगतान अध्यक्ष द्वारा अपने पास से किया जाता था । प्रार्थी विपक्षी बैंक में कभी कार्यरत नहीं रहा । उसकी नियुक्ति विपक्षी बैंक द्वारा नहीं की गई । विपक्षी बैंक द्वारा प्रार्थी को कभी वेतन का भुगतान नहीं किया गया । प्रार्थी की विपक्षी बैंक में कोई उपस्थिति दर्ज नहीं हुई और वह विपक्षी बैंक के रोल पर नहीं रहा । प्रार्थी तथा विपक्षी बैंक के मध्य मालिक तथा मजदूर का कोई सम्बन्ध स्थापित नहीं हुआ । प्रार्थी का विपक्षी बैंक में नियमों के तहत निर्धारित प्रक्रिया के अनुसार कभी किसी पद पर चयन नहीं किया गया । प्रार्थी विपक्षी बैंक का कर्मकार नहीं रहा । प्रार्थी को कभी कोई कार जयपुर लाने के लिए नहीं कहा गया और न ही प्रार्थी ने विपक्षी बैंक के प्रधान कार्यालय, जयपुर में अपनी सेवाएँ दी ।

5. अप्रार्थीगण ने यह उल्लेख किया है कि प्रार्थी की नियुक्ति विपक्षी बैंक द्वारा नहीं की गई । इस कारण उसे सेवा से पृथक किये जाने का कोई प्रश्न पैदा नहीं होता । प्रार्थी को बैंक के अध्यक्ष द्वारा निजी हैसियत से रखा गया था और उसके द्वारा ही उसे भुगतान किया जाता था । विपक्षी बैंक द्वारा केवल अध्यक्ष को वाहन सुविधा के लिए राशि का पुनर्भुगतान किया जाता था । प्रार्थी औद्योगिक विवाद अधिनियम की धारा 2 (एस) के तहत कर्मकार की परिभाषा में नहीं आता है । विपक्षी बैंक ने औद्योगिक विवाद अधिनियम की धारा 25-एफ अथवा अन्य किसी प्रावधान का उल्लंघन नहीं किया है । उक्त आधारों पर अप्रार्थीगण ने प्रार्थी के माँग-पत्र को निरस्त करने की प्रार्थना की ।

6. प्रार्थी ने अपने माँग-पत्र में उल्लेख किये गये तथ्यों की पुष्टि में स्वयं का शपथ-पत्र प्रस्तुत किया । प्रार्थी पी.डब्ल्यू-1 श्री श्रवणकुमार से प्रतिपरीक्षा की गई । प्रलेखीय साक्ष्य में प्रस्ताव पत्र प्रदर्श-1, कार्यालय टिप्पणी प्रदर्श-2, पुनर्भरण परिपत्र प्रदर्श-3 लगायत प्रदर्श-10, पत्र प्रदर्श-11, लॉग-बुक प्रदर्श-12 को पेश कर प्रदर्श करवाये गये । अप्रार्थीगण की ओर से श्री वी.सी. खिवसरा का शपथ-पत्र प्रस्तुत किया गया । डी.डब्ल्यू-1 श्री वी.सी. खिवसरा से प्रतिपरीक्षा की गई । प्रलेखनीय साक्ष्य में सर्कुलर प्रदर्श-1, पत्र प्रदर्श-2, स्टेचयुटरी ओर्डर प्रदर्श-3 तथा अधिनिर्णय की प्रति प्रदर्श-4 को पेश कर प्रदर्श करवाया गया ।

7. बहस उभय-पक्ष सुनी गई । पत्रावली का अवलोकन किया गया । पत्रावली पर उपलब्ध साक्ष्य तथा विधि के परिप्रेक्ष्य में हमारा निष्कर्ष निम्न प्रकार है ।

8. प्रार्थी ने अपने माँग-पत्र में यह उल्लेख किया है कि उसने अप्रार्थी बैंक के क्षेत्रीय कार्यालय, जोधपुर के क्षेत्रीय प्रबन्धक की कार को दिनांक 1-12-2001 से दिनांक 23-11-2006 तक चलाया था तथा बाद में प्रार्थी को दिसम्बर माह में उसे सेवा से पृथक कर दिया गया । अप्रार्थीगण ने इस तथ्य को माँग-पत्र के प्रत्युत्तर में स्पष्ट रूप से अस्वीकार नहीं किया है । पत्रावली पर उपलब्ध साक्ष्य के आधार पर यही तथ्य प्रमाणित होता है कि प्रार्थी ने दिनांक 1-12-2001 से दिसम्बर 2006 तक अप्रार्थी बैंक के क्षेत्रीय कार्यालय, जोधपुर के क्षेत्रीय प्रबन्धक की कार को चलाया था । पत्रावली पर उपलब्ध तथ्यों के आधार पर पक्षकारों के मध्य विवाद का बिन्दु केवल यह है कि जहाँ प्रार्थी ने यह माना है कि वह अप्रार्थी बैंक का कर्मचारी था वहीं अप्रार्थी बैंक यह मानता है कि विपक्षी बैंक के प्रायोजक बैंक युको बैंक द्वारा जारी परिपत्र संख्या एजीएम/डीएम/सर्कुलर नम्बर 5/86 दिनांक 30 अगस्त 1986 तथा परिपत्र संख्या एचओसी/एल/पीओएस/02/04 दिनांक अप्रैल 8, 2004 के अन्तर्गत अप्रार्थी बैंक के अधिकारियों को बैंक कार की सुविधा दी जाती है और इस कार को चलाने के लिए वह अधिकारी अपनी पसंदानुसार अपना व्यक्तिगत वाहन चालक रख सकता है तथा उसके वेतन का भुगतान उस अधिकारी द्वारा व्यक्तिगत रूप से किया जाता है तथा इसका पुनर्भरण वह अधिकारी बैंक से प्राप्त कर सकता है । इस आधार पर अप्रार्थीगण का यह मानना है कि प्रार्थी बैंक का कर्मचारी न होकर अप्रार्थीगण बैंक के क्षेत्रीय कार्यालय, जोधपुर के क्षेत्रीय मैनेजर का व्यक्तिगत वाहन चालक है । अप्रार्थीगण का यह मानना है कि प्रार्थी की नियुक्ति क्षेत्रीय प्रबन्धक ने अपनी व्यक्तिगत हैसियत में की थी तथा उसके वेतन का भुगतान उन्हीं के द्वारा अपनी व्यक्तिगत हैसियत में किया जाता था । अप्रार्थी बैंक ऐसे अधिकारी को केवल उस वेतन का पुनर्भरण करता है । अप्रार्थी बैंक का यह मानना है कि इस प्रकार प्रार्थी का वेतन अप्रार्थी बैंक द्वारा नहीं दिया जाता था । प्रार्थी की कोई उपस्थिति अप्रार्थी बैंक द्वारा नहीं ली जाती थी । प्रार्थी अप्रार्थी बैंक के रोल पर नहीं था तथा प्रार्थी की अप्रार्थी बैंक में कोई उपस्थिति अंकित नहीं की जाती थी । अप्रार्थीगण का यह मानना है कि प्रार्थी का चयन अप्रार्थी बैंक द्वारा नहीं किया गया । प्रार्थी का चयन बैंक के किसी नियमों के अन्तर्गत किसी प्रक्रिया के द्वारा नहीं किया गया । इन्हीं

आधारों पर विद्वान प्रतिनिधि अप्रार्थीगण का यह तर्क रहा है कि प्रार्थी तथा अप्रार्थी बैंक के मध्य कर्मकार तथा नियोजक का कोई सम्बन्ध नहीं रहा है। प्रार्थी औद्योगिक विवाद अधिनियम की धारा 2(एस) के प्रावधानों के अन्तर्गत कर्मकार की श्रेणी में नहीं आता है। इन आधारों पर विद्वान प्रतिनिधि अप्रार्थीगण का यह मानना है कि ऐसी परिस्थिति में इस प्रकरण पर औद्योगिक विवाद अधिनियम की धारा 25-एफ के प्रावधान लागू नहीं होते हैं। विद्वान प्रतिनिधि अप्रार्थी ने अपने इन तर्कों की पुष्टि में एक विधिक दृष्टांत *The Employers in relation to Punjab National Bank V. Ghulam Dastagir Lab.I.C. 1978 Page 519* प्रस्तुत किया। माननीय न्यायालय ने इस विधिक दृष्टांत में निम्न सिद्धांत प्रतिपादित किया है :-

“Area manager of nationalised bank given personal allowance by bank to enable him to employ personal driver of his own-Jeep which the driver was to drive, its petrol and oil requirements and maintenance, all fell within the financial responsibility of the bank-Absence of material however, to make out that the driver was employed by the bank was under its direction and control, was paid his salary by the bank and otherwise was included in the army of employees in the establishment of the bank-No evidence to show circumvention of any statute-Held that the conclusion that the driver was employed by the bank was erroneous.”

9. उक्त तर्कों के विपरीत विद्वान प्रतिनिधि प्रार्थी का यह तर्क रहा है कि प्रार्थी का वेतन अप्रार्थी बैंक द्वारा दिया जाता था। प्रार्थी अप्रार्थी बैंक का ही वाहन चलाता था। प्रार्थी को अप्रार्थी बैंक द्वारा बोनस आदि का भुगतान किया जाता था। प्रार्थी अप्रार्थी बैंक की लॉग-बुक को भी भरता था। प्रार्थी ने लम्बे समय तक करीब 6 वर्ष तक अप्रार्थी बैंक में वाहन चालक का कार्य किया है। विद्वान प्रतिनिधि प्रार्थी का इन आधारों पर मानना है कि प्रार्थी अप्रार्थी बैंक का कर्मकार है और वह औद्योगिक विवाद अधिनियम की धारा 2 (एस) के अन्तर्गत कर्मकार की श्रेणी में आता है। विद्वान प्रतिनिधि प्रार्थी का यह भी मानना है कि अप्रार्थी बैंक क्षेत्रीय प्रबन्धक को प्रार्थी के वेतन का पुनर्भरण करता था तब भी ऐसा प्रावधान श्रमिक विरोधी है और यह अनफेयर लेबर प्रैक्टिस की तारीफ में आता है। विद्वान प्रतिनिधि प्रार्थी का यह तर्क है कि अप्रार्थी बैंक के प्रायोजक बैंक युको बैंक द्वारा जारी परिपत्र संख्या एजीएम/डीएम/स्कूलर नम्बर 5/86 दिनांक 30 अगस्त 1986 प्रदर्श-1 तथा परिपत्र संख्या एचओसी/एल/पीओएस/02/04 दिनांक अप्रैल 8, 2004 के पीछे उद्देश्य ही यह है कि प्रार्थी तथा प्रार्थी जैसे कर्मचारियों को उनके विधिक अधिकारों से वंचित किया जावे। ऐसे परिपत्र श्रमिक विरोधी हैं तथा अप्रार्थी बैंक द्वारा प्रार्थी को बिना विधिक प्रक्रिया अपनाये सेवा से पृथक् करना अनफेयर लेबर प्रैक्टिस की तारीफ में आता है। विद्वान प्रतिनिधि प्रार्थी ने अपने इन तर्कों की पुष्टि में एक विधिक दृष्टांत *Ishwar Singh Vs. R.S.E.B. & others Rajasthan Law Weekly 2002(1) Page-1* प्रस्तुत किया है। माननीय न्यायालय ने इस विधिक दृष्टांत में निम्न सिद्धांत प्रतिपादित किया है :-

“Industrial Disputes Act, 1947, Sec. 2-S-Termination of Services. Whether the orderly appointed to discharge domestic work of an officer at home is workman within meaning of Section 2(s). Held-Engagement of any person for rendering services at the residence of other employees of the industry under the terms and conditions of whose employment sought, services of helping staff has to be made available at the residence of offices, is an employment in relation to discharging the work incidental to main industry-Functional nexus between them. Appointment by the authority authorised, under the order dated 6-1-79 establish relationship of employer and employee between the Board and petitioner-Petitioner is workman within the meaning of Section 2(s).”

10. हमने उक्त तर्कों पर पत्रावली पर उपलब्ध साक्ष्य के परिप्रेक्ष्य में विचार किया तथा उक्त विधिक दृष्टांतों का भी अध्ययन किया। प्रार्थी ने अपनी प्रतिपरीक्षा में यह उल्लेख किया है कि बैंक के अधिकारी ने बायाडाटा तथा लाईसेन्स की कॉपी माँगी थी जो उसने दी थी। उसे बैंक ने बुलाया था इसलिये वह वहाँ गया था। ड्राईवर के पद की योग्यता उसे पता नहीं। वह ड्राईवर का कार्य कर रहा था। उसके वेतन में 40 प्रतिशत प्रतिवर्ष वेतन वृद्धि लगाते थे। 50 रुपये बाहर जाने का भत्ता मिलता था। उसने अध्यक्ष महोदय की गाड़ी छः साल चलाई। पहले पी.के. अग्रवाल, बाद में बी.सी. साहू फिर गोपीचंद तथा फिर एम.आर. कूजड़ा की गाड़ी चलाई थी। यह गाड़ी बैंक की थी और उसका भुगतान बैंक करता था। जब वह बैंक जाता था तब उसकी लॉग-बुक में नोटें की जाती थी। उसकी हाजरी लगती थी। हाजरी लॉग-बुक में लगाते थे। अप्रार्थी के साक्षी डी.डब्ल्यू-1 श्री वी.सी. खिवसरा ने प्रतिपरीक्षा में उल्लेख किया है कि प्रार्थी श्रमिक चेयरमैन का व्यक्तिगत ड्राईवर था। चेयरमैन जहाँ जाता था वह वहाँ जाता था। चेयरमैन जोधपुर में बैठता था। इस साक्षी ने इस तथ्य को सही बताया है कि चेयरमैन को कार उनकी बैंक उपलब्ध करवाती थी। इस साक्षी ने कहा है कि कार के ड्राईवर का भुगतान चेयरमैन व्यक्तिगत रूप से करते थे। इस साक्षी ने कहा है कि पत्र प्रदर्श-1 तथा पत्र प्रदर्श-2 बैंक से जारी किये हुए हैं। इस साक्षी ने यह भी उल्लेख किया है कि दस्तावेज प्रदर्श-3 लगायत प्रदर्श-10 उनके बैंक के मैनेजर के हस्ताक्षर से जारी किये गये थे। इस साक्षी ने कहा है कि प्रतिमाह वेतन अध्यक्ष द्वारा दिया जाता था। जिसका पुनर्भरण बैंक द्वारा अध्यक्ष को किया जाता था। इस साक्षी ने कहा है कि लॉग-बुक प्रदर्श-10 कार के इंधन तथा एक्सेज के लिए मेंटन की जाती थी। पैसे का भुगतान तथा लॉग-बुक का कोई सम्बन्ध नहीं है।

11. हमने उक्त तर्कों पर पत्रावली पर उपलब्ध साक्ष्य के परिप्रेक्ष्य में विचार किया तथा उक्त विधिक दृष्टांतों का भी अध्ययन किया। हमारी यह राय है कि हमारे समक्ष विचाराधीन इस प्रकरण के तथ्यों को देखते हुए विद्वान प्रतिनिधि अप्रार्थी द्वारा प्रस्तुत उक्त विधिक दृष्टांत में प्रतिपादित सिद्धांत हमारे समक्ष विचाराधीन इस प्रकरण पर

पूरी तरह से लागू होता है। हमारे समक्ष विचाराधीन इस प्रकरण में उपलब्ध साक्ष्य से यह तथ्य प्रमाणित है कि अप्राथी बैंक युको बैंक का प्रायोजित बैंक है तथा इस पर युको बैंक द्वारा जारी परिपत्र प्रदर्श-1 के प्रावधान लागू होते हैं। इसके अनुसार अप्राथी संख्या-1 के अधिकारी क्षेत्रीय प्रबन्धक, जोधपुर को बैंक के वाहन की सुविधा प्रदान की गई है। इस बैंक के अधिकारी क्षेत्रीय प्रबन्धक अपने इस वाहन को चलाने के लिए अपनी व्यक्तिगत हैसियत में चालक के पद पर अपने पसंद के अनुसार व्यक्तिगत वाहन चालक रख सकते हैं। प्राथी को इसी प्रावधान के अन्तर्गत अप्राथी संख्या-1 के अधिकारी ने अपने वाहन को चलाने के लिए अपनी पसंद के अनुसार व्यक्तिगत वाहन चालक के पद पर रखा। यह अधिकारी प्राथी को अपनी व्यक्तिगत हैसियत से नियमानुसार वेतन देता है तथा इस राशि का पुनर्भरण अप्राथी बैंक से प्राप्त करता है। प्राथी ने दस्तावेज प्रदर्श-3 लगायत प्रदर्श-10 प्रस्तुत किये हैं। इनसे भी यही तथ्य प्रमाणित होता है कि अप्राथी संख्या-1 के अधिकारी ने अपने व्यक्तिगत चालक प्राथी श्री श्रवणकुमार को वेतन दिया तथा प्राथी ने भी इसी हैसियत से उक्त अधिकारी से यह वेतन प्राप्त किया। इसके बाद अप्राथी बैंक ने उक्त अधिकारी को इस वेतन की राशि का पुनर्भरण किया। कार्यालय टिप्पणी प्रदर्श-2 से भी इसी निष्कर्ष की पुष्टि होती है। जहाँ तक लॉग-बुक प्रदर्श-12 प्राथी द्वारा भरने का प्रश्न है तो हमारी यह राय है कि प्राथी अप्राथी बैंक के वाहन को चलाता है और इस कारण उसके द्वारा इस वाहन की लॉग-बुक भरना स्वाभाविक है।

12. पत्रावली पर यह साक्ष्य नहीं है कि प्राथी को अप्राथी बैंक ने वाहन चालक के पद पर नियुक्ति प्रदान की। पत्रावली पर यह भी साक्ष्य नहीं है कि प्राथी का उक्त पद पर चयन अप्राथी बैंक की किसी भर्ती प्रक्रिया के तहत किया गया। प्राथी का चयन अप्राथी बैंक के किसी नियम के अन्तर्गत अप्राथी बैंक द्वारा नहीं किया गया। प्राथी को सीधे ही बैंक द्वारा कोई वेतन प्रदान नहीं किया जाता है। प्राथी की उपस्थिति भी अप्राथी बैंक में नहीं रखी जाती है। अतः समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में प्राथी तथा अप्राथी बैंक में कर्मकार तथा नियोजक के सम्बन्ध स्थापित नहीं होते हैं। अतः समस्त परिस्थितियों पर सावधानीपूर्वक विचार करने के पश्चात् हमारी राय में यह तथ्य प्रमाणित नहीं होता है कि अप्राथी बैंक ने प्राथी को दिसम्बर 2006 से सेवा से पृथक किया।

13. बहस के दौरान प्राथी के विद्वान प्रतिनिधि ने दिनांक 14-11-2011 को एक प्रार्थना-पत्र के साथ एक परिपत्र, तथा दो अनुसूचियाँ प्रस्तुत की हैं। इसकी प्रति विद्वान प्रतिनिधि अप्राथी को दिलवाई गई। अप्राथी की ओर से जवाब प्रस्तुत हुआ। हमने दोनों पक्षों को सुना। विद्वान प्रतिनिधि प्राथी का यह तर्क है कि यह परिपत्र युको बैंक द्वारा जारी किया गया है तथा अप्राथी बैंक इस युको बैंक का प्रायोजित बैंक है। स्वयं अप्राथी बैंक ने यह स्वीकार किया है कि उनपर युको बैंक का परिपत्र लागू होता है। विद्वान प्रतिनिधि प्राथी का यह तर्क है कि अप्राथी बैंक ने इस परिपत्र के द्वारा उन व्यक्तिगत चालकों को जिन्होंने पांच साल से भी कम अवधि के लिए सेवा की है उन्हें भी अपनी सेवा में समायोजित कर लिया है। विद्वान प्रतिनिधि प्राथी का यह तर्क है कि प्राथी भी इस परिपत्र के अन्तर्गत लाभ प्राप्त

करने का अधिकारी है। विद्वान प्रतिनिधि अप्राथी का यह तर्क रहा है कि यह परिपत्र प्राथी पर लागू नहीं होता है। यह परिपत्र उन्हीं व्यक्तिगत चालकों पर लागू है जो दिनांक 1-7-2007 को व्यक्तिगत चालक के रूप में कार्य कर रहे थे। प्राथी को इसके पूर्व ही दिसम्बर 2006 में सेवा से पृथक कर दिया था।

14. हमने उक्त तर्कों पर पत्रावली पर उपलब्ध साक्ष्य के परिप्रेक्ष्य में विचार किया तथा उक्त दस्तावेजों का भी अध्ययन किया। यह सही है कि अप्राथी बैंक के प्रायोजक बैंक ने दिनांक 1-7-2007 को उनके यहाँ कार्यरत उन 39 व्यक्तिगत चालकों को जिन्होंने दिनांक 1-10-2006 तक 15 वर्ष से ज्यादा अवधि तक व्यक्तिगत चालक के रूप में कार्य किया है उन्हें पीयोन काम प्रारंभ की सेवा में समायोजित किया है। इस परिपत्र के अनुसार इस परिपत्र के साथ संलग्न एनेक्सचर-II में वर्णित 35 उन व्यक्तिगत चालकों को भी उक्त लाभ प्रदान किया गया है जिन्होंने दिनांक 1-10-2006 तक पांच वर्ष से ज्यादा लेकिन 15 वर्ष से कम अवधि तक व्यक्तिगत चालक के रूप में कार्य किया है। यह भी सही है कि प्राथी ने अप्राथी बैंक में दिनांक 1-12-2001 से दिसम्बर 2006 तक पांच वर्ष से ज्यादा अवधि तक कार्य कर लिया है, लेकिन यह भी एक तथ्य है कि प्राथी दिनांक 1-7-2007 को व्यक्तिगत चालक के रूप में कार्य नहीं कर रहा था। प्राथी को इसके पूर्व ही सेवा से पृथक कर दिया गया था। उक्त परिपत्र उन्हीं व्यक्तिगत चालकों पर लागू होता है जो कि दिनांक 1-7-2007 को कार्यरत थे। इसके अलावा हमारी यह राय है कि यह अप्राथी बैंक का पॉलिसी मेटर है। अप्राथी बैंक इसके अन्तर्गत अपने नीतिगत निर्णय करती है। प्राथी पर इसके सम्बन्ध में अप्राथी बैंक द्वारा विचार नहीं किया गया। हमारे समक्ष विचाराधीन यह प्रकरण नियमितीकरण का नहीं है। ऐसी स्थिति में हम इस रेफरेन्स से बाहर जाकर प्राथी को कोई लाभ देने की स्थिति में नहीं हैं। न्यायहित में विकल्प यही हो सकता है कि प्राथी अप्राथी बैंक के समक्ष इस सम्बन्ध में अपना आवेदन प्रस्तुत करे और अप्राथी बैंक उस पर एक माह की अवधि में सहानुभूतिपूर्वक विचार करे।

आदेश

15. अतः यह अधिनिर्णित किया जाता है कि :-

(1) प्राथी श्रवणकुमार जोशी तथा अप्राथी थार ग्रामीण बैंक के मध्य कर्मकार तथा नियोजक का सम्बन्ध स्थापित नहीं हुआ है।

(2) प्राथी श्रवणकुमार जोशी को अप्राथी बैंक द्वारा दिसम्बर 2006 में सेवा से पृथक नहीं किया गया। अतः प्राथी कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

(3) प्राथी, अप्राथी बैंक के प्रायोजक, बैंक युको बैंक के परिपत्र संख्या HOCL/POS/01/07-08 दिनांक 27-06-2007 के अन्तर्गत अप्राथी बैंक के समक्ष आवेदन प्रस्तुत कर सकता है तथा अप्राथी बैंक को यह निर्देश दिया जाता है कि वह प्राथी द्वारा उक्त आशय का आवेदन प्रस्तुत होने पर एक माह की अवधि में उस आवेदन-पत्र पर सहानुभूतिपूर्वक विचार कर उस आवेदन-पत्र का निस्तारण करे।

16. इस अधिनिर्णय को प्रकाशनाथ भारत सरकार के श्रम मंत्रालय, नई दिल्ली को प्रेषित किया जावे।

17. यह अधिनियम मेरे द्वारा लिपिबद्ध करवाया जाकर आज दिनांक 15-11-2011 को खुले न्यायालय में हस्ताक्षर कर उद्घोषित किया गया।

एच. आर. नागौरी, न्यायाधीश

नई दिल्ली 7 अगस्त, 2012

का.आ. 2792.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चीफ पोस्ट मास्टर जनरल, भोपाल के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचट (संदर्भ सीजीआईटी/एल सी/आर/131/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-08-2012 को प्राप्त हुआ था।

[सं. एल-40011/06/1993-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 7th August, 2012

S.O. 2792.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/131/94) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial dispute between the Chief Post Master General, Bhopal and their workman, which was received by the Central Government on 07-08-2012.

[No. L-40011/06/1993-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

No. CGIT/LC/R/131/94

Presiding Officer : Shri Mohd. Shakir Hasan

Shri Narayan,

S/o Shri Lahumaji Kamble,

Type-II/84, P & T Colony,

Bhadbhada Road,

Bhopal

Shri Devi Das,

S/o Shri Ganpat Rao Karnake,

NID Sector 204,

Hut No. 609, Govindpura,

Bhopal

... Workman

Versus

Chief Post Master General,

MP Circle, Dak Bhawan.

Hoshangabad Road,

Bhopal

... Management

AWARD

Passed on this 29th day of June, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-40011/6/93-IR (DU) dated 11-8-94

has referred the following dispute for adjudication by this tribunal :—

“Whether the action of the management of the Chief Post Master General, MP Circle, Bhopal and Sr. Supdt. of Post Offices, Bhopal Division in terminating the services of Shri Narayan, S/o Shri Lahumaji Kamble w.e.f. 1-12-91 and Shri Devidas S/o Shri Ganpatrao Karnake w.e.f. 20-6-90 is justified? If not, what relief the concerned workmen are entitled to?”

2. The case of the workman, in short, is that Shri Narayan and Shri Devidas were working in the Ravi Shanker Post Office, Bhopal w.e.f. 1-9-1983 on full time as casual workers and worked more than 240 days. Their services were terminated abruptly w.e.f. 1-12-1991 and 20-6-1990 respectively. It is stated that no show-cause notice was given nor any retrenchment compensation was paid, nor any disciplinary enquiry was conducted. It is stated that they had acquired temporary status as per letter No. 4595/87-SPB-I dated 12-4-1991 issued by the union of India. It is stated that by order dated 13-3-1987 the casual labours were regularized to whom they had taken names who were Juniors to these two workmen. It is stated that the action of the management was not justified and was in violation of the provision of Section 25-F of the Industrial Disputes Act, 1947 (In short the Act, 1947). It is submitted that the workmen be reinstated with back wages and all other consequential benefits.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, inter alia, is that the workmen were employed by the Post Master of the concerned Post Office against leave arrangements with clear and specific conditions that the workmen would not be entitled for regular appointment. The service of the workmen were taken as and when required and not on a continuous basis w.e.f. 1-9-1983 to 1-12-1991. The workmen were contingent employees and had never worked for 240 days in any year preceding the date in issue. A seniority list is maintained of the contingent employees in order to obtain services. The services of the workmen were taken for specific period and automatically it came to an end on expiry of the period. They were not said to be retrenched employee. It is stated that on the basis of above grounds, the reference be answered in favour of the management.

4. On the basis of the pleadings of the parties, the following issues are framed—

I. Whether the action of the management in terminating the services of the workmen is justified?

II. To what relief the workmen are entitled?

5. Issue No. I

According to the workmen, Shri Narayan and Shri Devi Das were engaged in the Ravishanker Post office, Bhopal from 1-9-1983 and worked continuously till

1-12-1991 and 20-5-90 respectively when they were abruptly terminated from services whereas the management says that they were engaged against leave arrangement with clear and specific conditions and had not engaged continuously as claimed. It is also stated that to obtain the services of contingent employees for Group D post a seniority list was maintained as per gradation list of ED agents.

6. Now the evidence is to be examined as to whether the action of the management is justified in terminating these workmen. Five witnesses are examined in the case by the workmen. Shri Devi Das is the workman himself. He has supported in his evidence that he was working in the said post office w.e.f. 1-9-93 continuously and worked till 20-6-90 when his service was terminated without show-cause notice and without payment of retrenchment compensation nor any disciplinary proceeding was initiated. He has stated in cross-examination that he was engaged on daily wages and worked till 20-6-90. He has further stated that he had not left the service himself. There is no suggestion that he was engaged against leave vacancy for a fixed period and it was automatically ended after the said leave. There is nothing in his evidence to disbelieve this witness rather it is established that he was on daily wages and worked continuously till 20-6-90.

7. Another workman Shri Narayan is also examined in the case. He has also supported his case. He has stated that he was working w.e.f. 1-9-1983 and worked continuously till 1-12-1991 when he was terminated without notice and without payment of retrenchment compensation. In cross-examination, he has stated that he was daily wages employee. He has denied that he was engaged against any leave vacancy and he had himself left the job. His evidence has also fully corroborated the evidence of Shri Devi Das. His evidence also establishes that they worked more than 240 days for a period of one year during twelve calendar months preceding the date of their termination under the provision of Section 25 B(2) of the Act, 1947. He has also supported this fact in his evidence that no notice before termination nor any compensation was paid as has been required under Section 25-F of the Act, 1947.

8. Another witness Shri Jugal Kishore was Postman. He has stated that Narayan was working from 1983 for eight years against leave vacancy when regular postman was on leave. He has stated that he had seen that he got continuous engagement. Another witness Parmod Ambade was also postman. He has stated that Shri Narayan was working from 1983 to 87 on the leave vacancy. Those time many posts were vacant. He was getting engagement almost everyday. The last witness Shri Kashi Ram has stated that Devi Das was working as "Mali" from 86 to 90 continuously on all the days of the week. He was getting wages from P.M.G Office. The evidence of these witnesses shows that they were working

continuously. Two witnesses have supported the fact that the workman Shri Narayan was engaged against leave vacancy but continuously all the days and number of posts of postman were vacant. Admittedly they were engaged on casual basis. This itself shows that they were not employed for specific work and specific period and against specific post rather it is established that they were engaged continuously for a period of one year during twelve calendar months prior to the date of termination under the provision of Section 25B(2) of the Act, 1947. Thus the compliance of Section 25-F of the Act, 1947 was required before terminating or disengagement from the employment.

9. On the other hand the management has also adduced oral evidence. The management has failed to produce any documentary evidence. Though the pleading of the management is clear that there is seniority list of these contingent employees for Group D posts but the management has not filed the said seniority list for the reason best known to the management. It is clear that adverse inference is to be drawn that they were senior to the other casual employees who were appointed against vacant posts. The workman has filed copy of the office order dated 13-3-87 (Paper No. 45) to show that other casual workers were appointed by the management.

10. Now let us examine the oral evidence adduced by the management. The management has also examined four witnesses. The management witness Shri Hari Shankar Suryawanshi was working as postman. He has stated that the workmen were appointed against leave arrangements by the Sub Post master Nagar Post Office with clear and specific conditions that they would not be entitled to regular appointment. In absence of the document, it is difficult to rely on the conditions as has been stated by the witness. Moreover there is no reference to determine as to whether the workmen were entitled for regular appointment. In cross-examination, this witness has stated that the department put the affidavit before him and he signed over it. This itself shows that examination-in-chief is not his statement. He does not know as to whether the workmen were doing work or not. This witness is not a reliable witness.

11. Another management witness Shri Surendra Pratap uikey was working as sub Postmaster. His evidence in examination-in-chief is replica of the evidence of Shri Harishankar Suryawanshi. This shows that his evidence was prepared by the management and was simply signed by the witness. However in cross-examination he has stated that he was at Ravishanker Nagar Sub Post Office from 1985 to June, 1988 and that time the workman Shri Narain was working in the said Sub Post Office. He has further stated that the attendance register of Shri Narain was maintained and kept and the payment of wages was made on that basis. He has further stated that he was being engaged from Monday to Saturday. The said attendance register is not produced by the management

and no explanation is given as to why it was not produced in the case which was the most important piece of documentary evidence to show the number of days of work done by the workmen. His evidence further shows that the workman worked continuously on all the working days. In absence of the attendance register, it is evident that the contention of the workmen that they worked from 1-9-1993 till termination appears to be more probable.

12. Another management witness Shri Gunwanta was also working as Postman. His examination-in-chief is also replica of other above two witnesses. This is clear that it was prepared by the management. It also appears that it is a misuse of the process of law whereby it is permitted to file affidavit of the evidence of the witnesses. In cross-examination he has stated that the affidavit was prepared by the officers and he cant say as to what is in the affidavit. He has stated that he came in Feb 1987 in the said Post Office and the workman Shri Narayan was working there.

13. The last management witness Shri Uttam Rao Dongre was Sub Post Master in the said post office from June 1988 to February 1993. His examination-in-chief is also replica of other management witnesses. In cross-examination at para-5 he has stated that the workman Shri Narayan worked from 1988 to 1991 in the said Post Office. This shows that he is competent to say the period of work done by the workman as he was posted there. He has further stated that Sub Post Master was empowered to engage such outside worker for work on exigency. He has further stated that there was no service conditions for such engagement. He has stated that the attendance was maintained of the outsider worker on the leave arrangement register and the said register can only show that how many days the workman has worked. The management has withheld the said register nor any explanation is given for non-production of the document in Court for just decision of the case. The management is admittedly custodian of the record and withholding of documentary evidence is to be taken adversely against the management. This clearly shows that the story of the workmen appears to be probable that both the workmen were in continuous employment of the management till termination. This witness has also admitted at para-9 that no notice nor any compensation was paid to the workmen. This clearly shows that there was violation of Section 25-F of the Act, 1947 when the workmen were considered to be in employment continuously for a period of one year during the period of twelve calendar months preceding the date of reference to be calculated for the purpose. This issue is decided in favour of the workmen and against the management.

14. Issue No. II

Before deciding the relief, it is necessary as to whether the workmen are entitled to back wages. There is no pleading in the statement of claim that they are not gainfully employed after termination. There is also no evidence on behalf of the workmen on the above point. In

absence pleading and evidence of not in gainful employment, the workmen are not entitled to any back wages. However on the basis of discussion made above, it is clear that the action of the management is not justified in terminating them without complying the provision of Section 25-F of the Act, 1947. Thus the management is directed to reinstate them within two months from the date of award. Accordingly the reference is answered.

15. In the above circumstances of the case, the award is passed with cost of Rs. 10,000 (Rupees Ten Thousand only) to be paid by the management.

16. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली 7 अगस्त, 2012

का.आ. 2793—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टेलीकाम डिस्ट्रिक्ट मैनेजर, बान्द्रा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या सी.जी. आई.टी./एन.जी.पी./46/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-08-2012 को प्राप्त हुआ था।

[सं. एल-40012/197/2003-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 7th August, 2012

S.O. 2793.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/46/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between The Telecom District Manager, Bhandara & others and their workman, which was received by the Central Government on 07-08-2012.

[No. L-40012/197/2003-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/46/2004

Date: 13-07-2012

Party No. 1 (a) : The Telecom District Manager, Deptt. of Telecommunication, Telephones Exchange Building, Bhandara-441904.

1 (b) : The Chief General Manager, Maharashtra Telecom Circle, 8th Floor, Fountain Tel, Building, Phase-II, Mumbai-400001.

Versus**Party No. 2:**

Shri Rajpal Dasrath Sahare
R/o. Shrinagar, Near Budha Vihar,
Gondia, Maharashtra

AWARD

(Dated : 13th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Telecom and their workman, Shri Rajpal Sahare, for adjudication, as per letter No. L-40012/ 197/ 2003-IR (DU) dated 01-04-2004, with the following schedule :—

"Whether the action of the management of M/s. BSNL, Bhandara Telecom Division, Bhandara in terminating the services of She Rajpal Dasrath Sahare, Casual Motor Driver, w.e.f. 20-07-2002 without complying with the provisions of the ID Act is justified? If not, to what relief the workman concerned is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Rajpal Sahare, ("the workman" in short), filed the statement of claim and the management of Department of Telecom, ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that he was working as a Casual Motor Driver from 05-05-1997 in Bhandara District and appointment orders were issued in his favour and payment of wages was being made to him according to the Departmental Rules and he was also being given the weekly off days, but on 20-07-2002, he was retrenched from services by Shri Om Prakash Agrawal, SDE Phone, Gondia. The further case of the workman is that he was appointed by the D.E. (Admn.), Bhandara as a casual motor driver as per order dated 01-09-1997 w.e.f. 05-09-1997 on vehicle no. MH -35- D-33 and payment was being made to him on ACG-17 form, as per the order of Shri A.K. Mohabe and the DET (Admn.), Bhandara again renewed the order vide order dated 09-11-1998 and payment was made to him on ACG-17 form and DET, Gondia recommended for the renewal of his posting from time to time and in the said manner, he continued without any break in service from 05-05-1997 to 20-07-2002 and during the said period, he received orders of continuation in service and payments from TDM and on 26-04-2007, he was transferred to the office of SDE, Phones, Lakhandur and accordingly he joined at Lakhandur and the SDE, Lakhandur accepted his joining report, which clearly shows that he was treated as a regular motor driver department and he was driving the vehicle no. MH-35-D-60 of the SDE Lakhandur and enjoying all the facilities of regular employee and he was

again transferred from Lakhandur to Gondia and joined his duty on 23-11-2001 and started driving vehicle no. MH-35-D-60 and the SDE, Gondia reminded the department for regularisation of his services vide letter no. Q/RDS/ MD/2002-03 dated 23-04-2002, in which, it was clearly mentioned that he has been engaged since a long time and his request letter was also forwarded for regularisation of his services as Motor Driver and in letter no. V-1/vehicle/ 99-2000 dated 29-10-1999, the D.E. had stated about his working as a very good motor driver and to have been completed 353 days as a casual motor driver without break and also issued an experience certificate in that respect and he used to bring materials from various places as per orders, in the vehicle and he has copies of various receipts and bills of fuel, signed by him and counter signed by D.E. and SDE and he was receiving his payments through sanctioned memo of TDM on ACG-17 form and he was maintaining the log books of the vehicle showing that he was continuously working without any break since 05-05-97 and the log books were counter signed by the officer of the Telecom department and his name was also included in the muster roll of the regular employees and there are also other proofs to show that he had worked regularly without any break from 05-05-1997 to 20-07-2002 and though vide order dated 29-01-1999 his engagement as a motor driver alongwith that of one Shri Ramu T. Raghorte was approved for the period from 25-01-1999 to 19-07-1999, he continued to work thereafter also, without any break and party no. 1 did not pay him the salary for the months of July and August, 2000, and directed him to take the salary for those two months from the contractor, but he refused for the same and he had made an application to the General Manager, Headquarters, Office of the Chief General Manager, Telephones, Maharashtra Telecom Circle, Mumbai and the SDE, Gondia sent his report vide letter dated 03-08-2001 to the Dy. General Manager by giving false information about his engagement and mentioned that he was engaged on 05-05-1997 purely on temporary basis on daily wages for 120 days and he was discontinued from 01-09-1997 and he was again engaged from 01-12-1998 to 01-01-1999 and from 25-01-1999 to 08-07-1999 and for July and August, 2000, he was engaged by the contractor, but at no point of time, he was engaged by any labour contractor and only to get rid of his claim of regularisation as a departmental driver, such false information were submitted and from the attendance register, it can be found that he worked continuously from 05-05-1997 to 27-07-2000 and from the logbook, it can be found that he worked continuously from 30-04-1997 to 29-04-2002 with the Telecom department and on 22-07-2002, when he went to the office to perform duty, the SDE, Gondia gave him a letter informing him about retrenchment of his services on the ground of having no work of a driver in the office and took the keys and papers of the vehicle no. MH-35-D-60 from him and while issuing the order of retrenchment, the party no. 1 did not follow

the provisions of the Act and though Shri Ramu Raghorte was junior to him, he was kept in service by the party no. 1 and at the time of his retrenchment, no retrenchment compensation was paid to him and no notice was also served on him and as such, the termination of his services is illegal and the party no. 1 adopted unfair labour practice and as he continuously worked for long five years, even though he was appointed as a casual motor driver, he was entitled to get regularisation in service. The workman has prayed for his reinstatement in service with continuity and back wages seniority does not arise as the workman was engaged on daily wages basis.

3. The party no. 1 in their written statement have pleaded that the workman was engaged as a casual motor driver on 05-05-1997 only for 120 days on purely casual basis as per the departmental rules and he was not appointed as a casual motor driver and the D.E. (Admn.), Bhandara did not renew the order but issued separate order without linking to previous order for engagement as casual motor driver for 60 days from 01-11-1998 on purely temporary and daily wages basis and in the said order, it was clearly mentioned that the said engagement was liable to be discontinued at any time without assigning any reason and as the workman was a Casual Motor driver, there was no question of his transfer to SDE, Phones, Lakhandur and the Recruitment Rules for regular Motor drivers are separate, which are governed by the BSNL Corporate Office and the claim of the workman that he was working at Lakhandur and was availing the facilities of regular employee and was again transferred to Gondia, where he joined his duty on 23-11-2001 is not true and in absence of the alleged transfer orders, adverse inference should be drawn against the workman and as because the SDE, Gondia requested the DEP, Gondia regarding regularisation of drivers, the same cannot be construed that the workman was made regular and the workman was engaged as a casual motor driver for 120 days from 05-05-1997 to 31-08-1997, for 60 days from 01-11-1998 to 31-12-1998 and for the period from 25-01-1999 to 18-07-1999 by three separate orders, which cannot be linked together, entitling the workman to claim regularization and except the said three orders, no other order issued by them to the workman and the workman cannot base his claim on internal correspondence of the officers of the department and he has not filed any certificate to the effect that he had worked for 353 days as casual motor driver without any break, though he has alleged to have it and for operative and maintenance of Telecom network, temporary advances are granted to the Field Officers by the District Office for incurring petty and contingent expenses for smooth working of telephones exchanges and the amount of expenditure of such contingent is submitted in the prescribed pro-forma ACE-2, which is the expenditure of casual motor driver for a short period, which has no relevancy to the case of the workman and

logbook has to be maintained for history sheet of vehicle for its record and the TDM Bhandara approved to engage the workman as a casual motor driver on purely temporary and daily wages basis with clear instruction that his engagement would be discontinued at any time without assigning any reason and to discontinue the services of the workman after expiry of the period, without waiting for the order from the office and there was no question of continuing the workman and wages was paid for the said period to the workman on ACG-I 7, so question of payment through contractor does not arise and no false report was submitted to CGMT, Maharashtra Circle, Mumbai and in the said letter, the real position was given and no letter of retrenchment was issued and as the engagement of the workman was on casual basis; there was no question of following the formalities and the workman is not entitled to reinstatement or any other relief. It is also pleaded by the party no. 1 that the cadre of motor driver is Civil Class III (Gr. 'C') and the recruitment rules for the motor drivers' governed by BSNL and out the vacancies, 50% recruitment is direct and the rest 50% is by promotion from regular group 'C' and 'D' staff having minimum 3 years of regular service and at present there is no question of regularisation of the workman and the question of seniority does not arise as the workman was engaged on daily wages basis.

4. Besides placing reliance on documentary evidence, the workman has examined himself as a witness. The workman has reiterated the facts mentioned in the statement of claim, in his examination-in-chief, which is on affidavit. However, in the cross-examination, the workman has stated that except the salary, he was not getting other facilities granted to regular employees and the DET, Gondia had recommended for regularisation of his services, but he cannot say if any reply was received regarding regularisation of his services and he was not getting his salary by signing acquaintance roll and he was signing the muster roll and he has filed the documents in support of his claim of working continuously from 05.05.1997 to 20.07.2002 and he does not know the nature of the appointment of Ramu Raghorte and Ramu was working at Bhandara.

5. One Vijay Kurmar Meshram, a Divisional Engineer (Admn.) has been examined as a witness on behalf of the party no.1. This witness has also reiterated the facts mentioned in the written statement, in his examination-in-chief, which is on affidavit. In his cross-examination, the witness has stated that the workman was appointed as casual driver on jeep no. MH -35- D-0033 and he was paid under ACG-I 7 and a logbook is given alongwith the vehicle and the regular driver uses to sign the logbook himself and in case of appointment of driver on casual basis, the Controlling Officer is required, to sign the same and he has not verified the documents filed by the workman and the logbook and the Xerox copies of the attendance register

are having the signatures of the drivers including the workman.

6. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed as a casual motor driver on 05-05-1997 in Bhandara Telecom District and worked continuously till 20-07-2002, under the SDE, Gondia and Lakhandur and on 20-07-2002, his services were terminated without compliance of the mandatory provisions of Section 25-F of the Act and as such, his termination was illegal and the workman is entitled to reinstatement in service with continuity and full back wages.

In support of the contentions, the learned advocate for the workman placed reliance on the decisions reported in 2010 (5) Mh. LJ-244 (Anoop Sharma Vs. Executive Engineer), 2011 II CLR - 461 (Devinder Singh Vs. Municipal Council, Sanaur) and 2010 (I) SCALE - 613 (Harjinder Singh V/s. Punjab State Warehousing Corporation).

7. Per contra, it was submitted by the learned advocate for the management that the workman was engaged as casual motor driver on purely casual and temporary basis for the period from 05-05-1997 to 31-08-1997, 01-11-1998 to 31-12-1998 and 25-01-1999 to 18-07-1999 by separate orders and there was clear instruction that his engagement would be discontinued at any time without assigning any reason and for the period of engagement of the workman, payment was made to him on ACG-17 and the workman did not work continuously from 05-05-1997 to 20-07-2002 and no letter of retrenchment was ever issued to the workman and as the workman was engaged as a casual motor driver for stipulated period, question of compliance of the provisions of Section 25-F of the Act does not arise.

8. Perused the record including the pleadings of the parties and the evidence, both oral and documentary adduced by the parties. After taking into consideration the materials on record and the submissions made by the learned advocates for the parties, it is found that the workman was engaged by the party no.1 as a casual temporary motor driver on daily wages basis on 05-05-1997 and his engagement was not as a regular driver or in accordance with the Rules of recruitment of party no.1.

9. In this case, the workman has claimed that he had worked continuously from 05-05-1997 to 20-07-2002 and his services were terminated on 20-07-2002 and that before the termination of his services, neither any notice was given to him nor retrenchment compensation was paid to him and as such, the termination of his services is illegal. The claim has been denied by the party no. 1. According to party no.1, the workman was only engaged from 05-05-1997 to 31-08-1997, 01-11-1998 to 31-12-1998 and 25-01-1999 to 18-07-1999 by three separate orders and he did not work continuously from 05-05-1997 to 20-07-2002.

10. It is well settled by the Hon'ble Apex Court in a number of decisions that service of 240 days in a period of twelve calendar months is equal not only to service for a year, but is to be deemed continuous service even if interrupted and therefore, though Section 25-F speaks of continuous service for not less than one year under the employer, both conditions are fulfilled if the workman actually worked for 240 days during a period of 12 calendar months and it is not necessary to read the definition of continuous service into Section 25-B, because the fiction converts service of 240 days a period of 12 calendar months into continuous service for one complete year. It is also well settled by the Hon'ble Apex Court that the initial burden to prove 240 days' continuous service is on the workman and the workman has to show that in fact he had worked for 240 days during a period of twelve calendar months preceding the date with reference to which calculation is to be made.

So, keeping in view the settled principles as mentioned above and the principles enunciated by the Hon'ble Apex Court in the decision cited by the learned advocate for the workman, now, it is to be found out as to whether the workman has been able to discharge the burden to prove that in fact he had worked for 240 days in the preceding 12 calendar months of 20-07-2002.

11. Besides his own oral evidence on affidavit, the workman has filed the copies of the representations made by him for his reinstatement in service, order of retrenchment, ACG-17 forms showing payment of wages to him, engagement orders, sanction order for his engagement and payment of wages, attendance register and log book of the vehicle, which he was driving. The workman has mentioned about such documents in detail in the statement of claim and in his evidence on affidavit. The party no. 1 in the written statement has not pleaded that the documents produced by the workman are not genuine documents. The witness examined by the party No. 1 has also not denied the genuineness of the said documents. Rather, in the cross-examination, the witness for the party no.1 has admitted that the Xerox copies of the attendance register show the signature of the drivers including the workman. The claim of the party no.1 is that the documents cannot be considered, as the same have not been attested. When the party no.1 has not disputed the genuineness of the documents filed by the workman, there is no force in the contention that as because the same have not been attested, the same cannot be considered. Hence, the documents filed by the workman are to be considered to arrive at the right conclusions in respect of the claims made by the parties.

The document "GAD I BIBAD", which is in Hindi shows that the workman was stopped from working as a casual motor driver from 20-07-2002, due to joining of one Shri Pande, a regular driver of the department on 20-07-2002 and the vehicle MH-35-D-60 and the keys and

documents of the said vehicle were taken from the workman. The document dated 16-04-2001 having the seal and signature of SDE Lakhandur shows that the workman's joined at Lakhandur on 16-04-2001 and his joining report was accepted by the SDE, Lakhandur. The letter dated 23-04-2002 of SDE, Phones, Gondia to the DE, Phones-II, Gondia is in regard to the regularisation of the workman, where in it had been mentioned that the workman has been engaged since long. The copies of ACG-17, the attendance register and copies of log books of vehicles MH-35- D-33 and MH-35- D-60 and other documents clearly prove that the workman worked for 240 days preceding the 12 calendar months of 20-07-2002 and that he worked continuously from 05-07-1997 to 20-07-2002. It is also found from the evidence on record that the party no. 1 has not come up with clean hands.

Admittedly, neither one months notice nor one month's pay in lieu of notice nor retrenchment compensation was paid to the workman, before the termination of his services. So the termination of the services of the workman amounts retrenchment. Due to non-compliance of the mandatory provisions of Section 25-F of the Act before termination of the services of the workman, the termination is held to be illegal.

12. Now, the question remains for consideration is as to for what relief or reliefs the workman is entitled to. It is clear from the record that the workman was initially engaged as a casual motor driver on daily wages by party no. 1 in 1997. His engagement continued for about five year up to 20-07-2002. The claim of the party no. 1 that at present, there is no recruitment of motor driver and vehicles are hired alongwith driver by way of tender has not been challenged or disputed by the workman. So far back wages is concerned, it is well settled by the Hon'ble Apex Court in a number of decisions that to claim back wages, it is necessary for the workman to plead and prove that he is not in gainful employment since the date of the termination. In this case, the workman has neither pleaded nor proved that he was not in gainful employment since the date of his termination. Rather, in his cross-examination, he has admitted that he is maintaining his family by working as a labourer. Hence, the workman is not entitled to back wages.

Taking into consideration that about 15 years back, the workman was engaged as a daily wager motor driver and he continued for about five years as such and all other facts and circumstances of the case as mentioned above, It appears to me that the relief of reinstatement of the workman will not be justified and instead monetary compensation will meet the ends of justice. In my considered opinion, the compensation of Rs. 75,000 in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered :—

ORDER

The action of the management of M/s. BSNL, Bhandara Telecom Division, Bhandara in terminating the services of Sh. Rajpal Dasrath Sahare, Casual Motor

Driver, w.e.f. 20-07-2002 without complying with the provision of the ID Act is unjustified. The workman is entitled for monetary compensation of Rs. 75, 000 in lieu of reinstatement. He is not entitled for any other relief.

The party no.1 is directed to pay the compensation of Rs. 75,000 to the workman within one month from the date of Publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 7 अगस्त, 2012

क्र.आ. 2794.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डिप्टी चीफ इन्जीनियर, वैस्टर्न रेलवे, रतलाम के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सी.जी.आई.टी./एल.सी./आर./191/91) को प्रकाशित करती है जो केन्द्रीय सरकार को 7-8-2012 को प्राप्त हुआ था।

[सं. एल-41011/13/1991-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

—New Delhi, the 7th August, 2012

S. O. 2794.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/LC/R/191/91) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the Deputy Chief Engineer, Western Railway, Ratlam and their workman, which was received by the Central Government on 7-8-2012.

[No. L-41011/13/1991-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/191/91

Presiding Officer : Shri Mohd. Shakir Hasan

Shri Laxmi Narayan Solanki, Rajiv Kumar,
Ramesh Chander, Prakash Chander,
Ram Shankar, Chhaganlal, Phool Singh & Goverdhan Singh
Manohar Hotel Ki Gali, Station Road, Ratlam

.....Workmen

Versus

Deputy Chief Engineer,
(Survey & Construction),
Western Railway, Ratlam Division,
Dobatti, Ratlam

.....Management

AWARD

Passed on this 2nd day of July, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-41011/13/91-IR (DU) dated 21-10-91 has referred the following dispute for adjudication by this tribunal:—

“Whether the action of the management of Dy. Chief Engineer (Survey and Construction), Western Railway, Ratlam in terminating the services of S/Shri Laxmi Narayan Solanki, Rajeev Kumar, Ramesh Chander, Prakash Chander, Ram Shankar, Chhagan Lal, Phool Singh and Govardhan Prasad is justified. If not, to what relief the concerned workman are entitled?”

2. The case of the workman, in short, is that the workman were appointed as casual labour after verifying all required documents and requisite conditions in the year 1986 under the Inspector of Works (Construction), Ratlam Division of Western Railway and worked without any break till 1988 when they were terminated on different dates by Dy. Chief Engineer (Survey & Construction). They were entitled to be declared as temporary workers and were entitled for all benefits of payment and other facilities which were admissible to the employees who attained the temporary status on completion of 120/180 days of continuous service as per policy decision of the Railway Board. It is stated that their services were terminated on false allegations that their service cards were found as bogus cards. It is stated that no impartial enquiry was conducted before terminating the workmen. Some nominal and sham enquiry was conducted at the back of the workmen. No chargesheet was ever issued. Simply letter of explanation were issued to the workmen and the same had been properly and correctly replied and the allegation was denied. The enquiry should be held under Railway Servants (D & A) Rules, 1968 before terminating the workmen as they had acquired the status of temporary Railway employees on continuous two years services. It is stated that the termination of the services of the workmen are arbitrary, unjust and discriminatory and violative of natural justice. It is also stated that the management in terminating the services of the workmen had violated the provision of the Industrial Dispute Act, 1947 (in short the Act, 1947) as they were workmen and were retrenched employees. On the basis of the above grounds, it is submitted that the workmen be reinstated with full back wages.

3. The management also appeared and filed reply (Written Statement) to contest the reference. The case of the management, inter alia, is that the applicants/workmen were engaged as casual labour by I.O.W(C) Ratlam on the basis of service cards but at the time of granting temporary status, their cards were examined by the verifying officer who advised that none of these card holders had worked

with them and the cards submitted by the applicants were false and bogus and not issued by the Competent Authority. In these circumstances, the service of these applicants were terminated as per rules and procedure. The provision of Railway Servants (Discipline and Appeal) 1968 is not applicable to these applicant and they were also not entitled to the benefits of temporary status as they got appointment by producing false and bogus cards. The action taken by the Railway Authority was just and proper and no detailed enquiry was needed to such persons who obtained services by submitting false cards and false representation. It is stated that they cannot be treated as workmen as their engagement was not proper and valid. It is submitted that the applicants are not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed-

- I. Whether the action of the management in terminating the services of S/Shri Laxmi Narayan Solanki, Rajeev Kumar, Ramesh Chander, Prakash Chander, Ram Shankar, Chhagan Lal, Phool Singh and Govardhan Prasad is justified?
- II. To what relief these workmen are entitled?

5. Issue No. 1

Before discussing the issues, it is proper to enumerate the facts admitted by both the parties-

1. These workmen were engaged in the year 1986 as casual labour by I.O.W(C), Ratlam on the basis of Old Service Cards alleged to have been issued to them.
2. They worked till July, August 1988 about two years in the service of the management.
3. They were terminated thereafter on the charges of obtaining employment on fake and bogus cards produced by them which was a stigma on the character of the workmen.
4. No enquiry was held to prove the charges by the management against the workmen by giving opportunities to defend themselves.

6. Now the important point for consideration is as to whether the casual labour cards of workmen were fake and bogus on the basis of which the services of the workmen were terminated by the management. It is clear that the management has asserted that the casual labour cards were fake and bogus. As such the burden is on the management that these cards were found bogus and fake as such the action of the management in terminating their services is justified. Not let us examine the evidence of the management at the first instance. The management has examined only one witness to prove his case. Shri Rajesh Dixit is working as Deputy Chief Engineer (Survey and

Construction), Deptt. Western Railway, Ratlam. He has stated at para-13 that he is deposing on the basis of record and he had no personal knowledge. He has further stated at Para 22 that the enquiry of fake cards was not done under his supervision. This itself shows that he had not examined the said cards himself or participated in the enquiry of fake cards to say that these workmen were working on fake casual service cards. The management has not filed and proved any document in the reference proceeding on the basis of which this witness claims to have deposed. He has stated at para-19 that these workmen had deposited the service cards at the time of second appointment. He had admitted the periods of work done by these workmen from 1986 to 1988. He has stated at Para-24 that the cards were not verified and at Para-25, he has stated that no departmental proceeding was conducted against them. Thus it is clear from the evidence of the sole management witness that there is not proof to establish that the casual service cards submitted by the workmen were fake and bogus. His evidence establishes that the management had terminated these workmen without coming to the definite conclusion that the casual service cards were fake and bogus.

7. It is not out of place to say that the management has not filed and proved any document in the case to establish that these cards were ever verified and were found fake and bogus. The learned counsel for the management submitted that the original documents were stolen away from the possession of lawyer in the year 1998. It is surprising as to why it was not filed along with the Written Statement in 1992. The explanation is not acceptable. The management has also failed to examine any such witness who is said to have issued such cards at the relevant time or verified the same. The management has also failed to explain the reason as to why those witnesses have not been examined in the case who are alleged to have issued those cards to the illiterate labourers and were competent witnesses. The witness examined by the management appears to be not competent to prove that the service cards submitted by the workmen were fake and bogus. Practically there is no evidence to prove that the cards were fake and bogus.

8. It is also clear from the evidence discussed above that the termination of these workmen were on the basis of charges of obtaining employment on fake cards. Admittedly no proceeding was conducted by the management against the workmen to give an opportunity to defend themselves. This also shows that there is a violation of natural justice.

9. The learned counsel for the management argued that the Railway Servants (Discipline and Appeal) Rules 1968 is not applicable. The learned counsel for the management referred Rules 3(1)(C) of the said Rules 1968 wherein it is clear that the said Rules 1968 shall not apply to casual employment. The learned counsel for the

management has also relied a decision reported in 1995 Supp. (4) SCC page 101, Union of India Vrs. M. Bhaskaran wherein the Hon'ble Apex Court held—

“The respondents have admittedly snatched employment in Railway service, may be of a casual nature, by relying upon forged or bogus casual labourer service cards. The unauthenticity of the service cards on the basis of which they got employment is clearly established on record of the departmental enquiry held against the employees concerned. Consequently, it has to be held that the respondents were guilty of misrepresentation and fraud perpetrated on the appellant-employer while getting employed in railway service and had snatched such employment which would not have been made available to them if they were not armed with such bogus and forged labourer service cards. Once the fraud of the respondents in getting such employment was detected, the respondents were proceeded against in departmental enquiries and were called upon to have their say and thereafter have been removed from service. Such orders of removal would amount to recalling of fraudulently obtained erroneous appointment orders which were avoided by the employer-appellant after following the due procedure of law and complying with the principles of natural justice. Therefore, even independently of Rule 3(1) (i) and (iii) of the Rules, such fraudulently obtained appointment orders could be legitimately treated as voidable at the option of the employer and could be recalled by the employer and in such cases merely because the respondent employees have continued in service for a number of years on the basis of such fraudulently obtained employment orders cannot create any equity in their favour or any estoppels against the employer.”

This ruling is not applicable in this case because firstly it is not established by the management that service cards were fake and bogus and secondly no departmental enquiry was held for complying the principles of natural justice.

10. On the other hand, the workmen are also examined in the case. They have also supported their case. The workman Laxmi Narayan has stated in his evidence at part-16 that he had worked for two months at Bharatpur in the year 1981 under PWI. He had produced the service card of his work. He has denied that he had given bogus card. Another workman Shri Ram Shankar has also corroborated other workmen. He has stated that at Para 15 that before 1986 he had worked from 1-5-81 to 10-7-81 at Bharatpur. He has supported this fact that only those workers were re-employed in the year 1986 who had worked earlier. He has further stated at para-12 that he had submitted his card in the office of IOW, Ratlam after countersign. His evidence also shows that he had worked

with the management prior to 1986. He has further stated that he had not received any notice from the Railway. Admittedly no proceeding was conducted by the management against them. Another workman Shri Ramesh Chandra has also supported and corroborated other workmen in his evidence. He has also stated at para-14 that he had worked from 21-3-84 to 15-5-84 under PWI at Piplod. He has also stated that Gowardhan Prasad and Rajiv Kumar had also worked at Piplod and the cards were prepared of their work by Shri Devra, PWI and LTI was taken on the register. He has further stated that from 23-9-85 to 20-11-85 he had worked at Ratlam under C.t. C.I (R.E.) The management has not examined any PWI of the relevant period of the relevant place to contradict the version of the workman. He has further stated at para 17 that the service cards were returned to the management after counter signature from Shri Arun Kumar, P.W.I. He has denied that the service card was fake and bogus. There is nothing in his evidence to disbelieve this workman specially because the management has failed to adduce any relevant document and competent witness who had done verification of the cards of the workmen.

11. Another workmen Shri Phool Singh has also supported his case. He has also supported in his evidence at para-14 that he worked at Dahlod in the year 1982-83 for 2 to 3 months under P.W.I. Dahlod. He has stated that his L.T.I. was taken on the register at the time of casual work. The management has failed to produce those register of the said period. It appears that no explanation is also given for non-production of any document to show that they had not worked at the said place. He has also supported this fact at para-16 that he had submitted his service card after proper counter signature of Asstt. Engineer, Dahlod. There is not documentary evidence in rebuttal, nor the management has examined any competent witness to contradict the version of the workman. Another workman Shri Chagan Lal has also corroborated other witnesses. He has stated at para-11 that he had worked two to two and half months in the year 1981 at Bharatpur under PWI. He has further stated that he had submitted his service card to the management after due countersignature from Asstt. Engineer, Bharatpur. the management has failed to examine any such witness to impeach the credit of the witness. There is no reason to disbelieve his evidence in absence of the relevant documents and competent witnesses of the management. Another workman Shri Gowardhan Prasad has also supported the case. He has also stated that he worked prior to 1986 at Piplod. His evidence also shows that he had deposited the service card after counter signature. Thus the evidence of the workman shows that they had worked earlier and the service cards were issued to them and the same were deposited to the management after countersign.

12. The workmen have also filed documents which are admitted by the management. Exhibit W/2 to W/9 are

the termination letters of the workmen. These documents are filed to show that the workmen had filed their service cards to the management and they had been terminated by the management on the allegation of fake service cards but the management had not filed any verification reports that those cards were fake nor examined competent witnesses who were alleged to have verified the service cards nor they had examined any those witnesses under whom the workman had alleged to work during those period. This also shows that these workmen were terminated on the basis of charges of submitting fake cards but no departmental enquiry was conducted for complying with the principles of natural justice and there was no basis of final conclusion that the cards were fake. Exhibit W/1 is the copy of judgement passed in number of O.A/T.A cases on 16-2-1987 by the Hon'ble Central Administrative Tribunal, Ahmadabad Bench wherein the casual labours were reinstated. This is filed to show that those workmen were terminated without complying the provisions of Section 25-F of the Industrial dispute Act, 1947 and no compensation was paid to them. But the termination of these workmen is on the basis of obtaining employment on alleged fake cards. Considering the entire evidence adduced in the case, it is clear it is not established that the service cards submitted by the workman were fake and bogus and they had not been terminated after complying the principle of natural justice. This issue is decided against the management and in favour of the workmen.

13. Issue No. II

On the basis of the discussion made above, it is clear that the action of the management is not justified in terminating the services of the workmen. The workmen Shri Prakash Chandra died on 12-2-2001 during the pendency of the reference proceeding and his legal heirs have been substituted in his place. Accordingly the management is directed to reinstate the workmen with full back wages. The management is further directed to pay the back wages to the legal heirs of the deceased workman Shri Prakash Chandra till the date of death within two months from the receipt of award. The reference is accordingly answered.

14. In the result, the award is passed without any order to costs.

15. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 7 अगस्त, 2012

का.अ. 2795.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम डिस्ट्रिक्ट मैनेजर, भण्डारा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में

केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सी.जी.आई.टी./एन.जी.पी./60/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 7-8-2012 को प्राप्त हुआ था।

[सं. एल-40012/147/2001-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

—New Delhi, the 7th August, 2012

S. O. 2795.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/60/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the The Telecom District Manager, Bhandara and their workman, which was received by the Central Government on 7-8-2012.

[No. L-40012/147/2001-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

**BEFORE J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/60/2001 **Date: 16-7-2012**

Party No. 1 : The Telecom District Manager,
Sanchar Nigam Limited, Sanchar
Bhavan Bhandara- 441 904 (MS)

Versus

Party No. 2 : Shri Narendra Jairam Khotele
R/o. At Awaritola (Gudama), PO:
Adasi Teh. & Distt. Gondia,
Maharashtra- 441 601

AWARD

(Dated: 16th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the Industrial dispute between the employers, in relation to the management of the Telecom District Manager, Bhandara and their workman, Shri Narendra Jairam Khotele, for adjudication, as per letter No. L-40012/147/2001-IR (DU) dated 30-8-2001, with the following schedule:—

"Whether the action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah) in terminating the services of Shri Narendra Jairam Khotele w.e.f. 30-8-2000 is legal, proper & justified? If not, to what relief the said workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written

statement and accordingly, the workman, Shri Narendra Jairam Khotele, ("the workman" in short), filed the statement of claim and the management of the Telecom Dist. Manager, Bhandara, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was a permanent workman of Party No. 1 and he was appointed on daily wages on 1-2-1999 as a Labour and he was doing the maintenance and repair of old cables under over all supervision of the S.D.E. cables, Gondia and working under the immediate supervision of cable jointers, who were permanent employees of Party No. 1 and he was maintaining daily work diary, which was regularly counter signed by the cable jointer and his salary was being paid on ACG-17 form, after verification of the same by the cable jointer and SDE, Gondia and from 1-2-1999, he worked continuously and acquired the status of permanent workman on completion of 240 days of service and the Party No. 1, terminated his services high handedly on 30-8-2000, without and notice, in utter disregard to the principles of natural justice and violation of the provisions of section 25-F of the Act and as such termination of his services was illegal and he raised the Industrial dispute before the ALC (Central) II, Nagpur and the Party No. 1 in its written comments filed before the ALC, falsely alleged that he was not appointed by it and he was appointed by the contractor, who was doing the contract work of laying new cables at Gondia and during the conciliation proceedings, the statement of Shri M.N. Meshram, Sub-Divisional Officer, Telecom, on behalf of the Party No. 1 was recorded by the ALC and in his statement, Shri Meshram admitted that he was engaged in his office and the work mentioned by him in the "daily work diary" was carried out by the department and payment of wages to the labour was being made on ACG-17 form, whenever the work was done by the labour, which clearly show that he was engaged by Party No. 1 on daily wages and not by the contractor and during the conciliation, the ALC directed the Party No. 1 to produce the ACG-17 forms, but Party No. 1 failed to produce the same and as the conciliation proceedings failed, failure report was submitted to the Central Government by the ALC and the Government has referred the Industrial dispute to this Tribunal for adjudication.

The further case of the workman is that he had requested the Party No. 1 and other higher authorities to regularize his services, but his services were not regularized, instead his services were terminated w.e.f. 30-8-2000 and such termination was by way of victimization and the work, which he was doing is of permanent nature and on the application, submitted by him on 25-11-2000 to the Chief General Manager, Shri S.M. Elamkar and Shri D.G. Nikhade, both permanent cable jointers of Party No. 1 had certified about his working in the office of S.D. O. Gondia and payment was being made to him on ACG-17 Form and he had worked for 575 days, from 1-2-1999 to August, 2000.

The workman has prayed to reinstate him in service with continuity and full back wages.

3. The Party No. 1 in its written statement, by denying the allegations made in the statement of claim has pleaded *inter alia* that the workman was never in its employment and as such, question of his termination does not arise and in view of its expansion in maintenance work i.e. underground cable laying and other maintenance work, as per its policy, it had called for tenders from private contractors and tender contracts were issued to respective private contractors and one such contract of under-ground cable laying was given to the contractor, "Atul Engineering" and the said contractor had engaged casual labourers from time to time, as per his requirement and the workman is one such casual labour engaged by Atul Engineering for executing the contract work awarded to them and as a matter of fact, the workman and four other labourers were engaged by Atul Engineering and after completion of work, it seems, Atul Engineering did not engage the workman and the other labourers and there was no nexus of master and servant relationship between it and the workman and Atul Engineering admitted the said fact before the A.L.C. and he had been paid his wages as per law till the date of his disengagement. The further case of the Party No. 1 is that it did not maintain any record with respect to the employment of the workman, since he was never in its employment and it had a policy decision not to engage any casual labour and it had been duly registered with the Assistant Labour Commissioner as a principle employer and had obtained a license to that effect on 13-11-1990 and subsequently on 25-5-1999 and annual returns in form XXV, in respect to the contractors engaged by it is regularly submitted to the ALC (Central) II, Nagpur and the ALC during his visit on 17-3-1990 and on 15-4-1999, under the provisions of contract Labour (R & A) Act, found that no casual labour was engaged by it and the work diary produced by the workman was prepared by him and the same has neither been certified nor signed by any competent authority and the signatures on the said work diary are not by competent authority vested with managerial and administrative power.

The further case of the Party No. 1 is that the workman was never appointed by it on daily wages on the post of labour and he is not a workman within the meaning of the Act and the workman is not entitled to any relief.

4. In the rejoinder, the workman has pleaded that the alleged certificate issued by Atul Engineering, is a false document and Atul Engineering issued the false certificate in collusion with Party No. 1

5. In support of his claim, the workman has examined himself as a witness, besides placing reliance of documentary evidence. The examination-in-chief of the workman is on affidavit. The workman in his evidence has reiterated the facts mentioned in the statement of claim. In

his cross-examination, the workman has stated that no appointment letter was issued from Telecom department in his favour and he has submitted daily work diary which has been signed by cable joiner D.G. Nihare and he had not receive any call for interview and he also did not receive any letter from the employment exchange for the service. He has denied the suggestion that he was engaged by the contractor, Atul Engineering for laying cable. He has also admitted that he did not receive any termination order.

6. One Deonath Motinath Manwatkar, SDE (Legal) has been examined as a witness on behalf of the Party No. 1. In his examination-in-chief, which is also on affidavit, he has reiterated the facts mentioned in the written statement. This witness has also proved the certificate of registration obtained from the ALC, the license granted in favour of Atul Engineering, particulars of the contractors engaged by the party no. 1, list of workers worked for Atul Engineering and letter dated 23-3-1999 of ALC Nagpur as Exts. M-II to M-VII respectively. In his cross-examination, this witness has stated that he cannot say if the petitioner was working from February 1999 to August 2000 and Mr. Elamkar and Shri D.G. Nihare was supervising as cable jointers and the document annexure-1 bears the signatures of Mr. Elamkar and Shri D.G. Nihare and annexure-1 is the copy of the application submitted by the petitioner to the Chief General Manager, Telecom for regularisation and in that application, the petitioner has mentioned the period of his engagement as February, 1999 to August, 2000 and Mr. M.N. Meshram, SDO has given his statement before the ALC. This witness has further admitted that the Telecom department for the first time got registration certificate on 25-5-1999 and Ext. M-III, the licence was granted to M/s. Atul Engineering on 19-8-1999 and prior to 19-8-1999, M/s. Atul Engineering was not given any contract by the Telephone department. This witness has admitted that the petitioner was engaged by the Telecom department prior to giving work to M/s. Atul Engineering and the inspection made by the ALC on 17-3-1999 was prior to the engagement of Atul Engineering as a contractor and Ext. M-VI it has been mentioned that 401 male and 12 female workers were employed by the department directly on the date of inspection and no document has been filed by the management to show about the approval of M/s. Atul Engineering as a contractor by Telecom District Manager, Bhandara or that there was any agreement between Atul Engineering and Telecom department regarding giving of work order to Atul Engineering to supply labours and accordingly Atul Engineering supplied labours and payment was made to Atul Engineering by the Telecom department for the same.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed on daily wages on 1-2-1999 by party no. 1 as a labourer for doing the departmental work of maintenance and repair of old cables under SDE, cables, Gondia and the

workman worked under the immediate supervision of the cable jointers and over all supervision of the SDE, Gondia and he was maintaining the daily work diary, which was counter signed by the cable jointers and wages was being paid to the workman under ACG-17 form and on 30-9-2000, the services of the workman was terminated, in violation of the provisions of section 25-F of the Act and as such, the order of termination is illegal and the workman was never engaged by any contractor and from the evidence on record, it is clear that to avoid its responsibility, Party No. 1 took a false plea of engagement of the workman by the contractor and Party No. 1 failed to produce the ACG-17 forms, inspite of the direction of the ALC during conciliation and the documents produced by the management have been manufactured with collusion with M/s. Atul Engineering and as the order termination of the services of the workman is illegal, he is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was argued by the learned advocate for the Party No. 1 that the workman was never appointed on daily wages basis on the post of labour by Party No. 1 and as the workman was never in the employment of Party No. 1 the question of his termination does not arise at all and Party No. 1 had issued contract to Atul Engineering for laying underground cable and the said contractor had engaged the present workman and four other workers for executing the contract work awarded to them and after completion of the work, the workman was not engaged by the said contractor any more and there was no master and servant relationship between Party No. 1 and the workman and from the evidence on record including the documents filed by the Party No. 1, it is clear that the workman was engaged by Atul Engineering and he was never appointed by Party No. 1 and as such, the workman is not entitled to any relief.

In support of the submission, the learned advocate for the Party No. 1 placed reliance on the decisions reported in (2008) 3 SCC-571 (Himmat Singh Vs. ICI India Ltd.) and AIR2001 S.C. 3527 (Steel Authority of India Ltd. Vs. National union water front workers and others).

9. In view of the stands taken by the parties, the first point for consideration is as to whether the workman was engaged as a labour on daily wages by the Party No. 1 or he was a contract labour as claimed by Party No. 1.

Perused the record including the pleadings of the parties and evidence produced by them, both oral and documentary. Admittedly, all the documents filed by the Party No. 1 regarding giving of contracts to Atul Engineering relate to the year 1999. The witness examined on behalf of the Party No. 1 has admitted the same. The workman has claimed that he was maintaining the daily work diary and the same was being counter signed by the cable jointers, who were the permanent employee of the Party No. 1. Party No. 1 in the written statement in para 18 has stated that the

work diary produced by the workman was prepared by him and the same was not certified or signed by any competent authority. The said pleading shows that Party No. 1 has not denied about the maintenance of the daily work diary by the workman and about counter signature of the same by the cable jointers. It is clear from the daily work diary and other evidence on record including the admission of the witness of the Party No. 1 that the workman was engaged by the Telecom department prior to the giving of work to M/s. Atul Engineering as a labour on daily wages and he was not engaged by the contractor.

It is clear from the evidence on record including the daily work diary that the workman had completed 240 days of work in the preceding 12 calendar months of the date of his termination i.e. 30-8-2000 and the termination of the services of the workman was done, without compliance of mandatory provisions of section 25-F of the Act. So, the termination of the services of the workman on 30-8-2000 is illegal.

10. The next question for consideration is as to what relief or reliefs the workman is entitled to. Admittedly the engagement of the workman was on daily wages basis. Such engagement was not done in accordance with the Recruitment Rules of Party No. 1. The engagement of the workman was for the period from 1-2-1999 to 30-8-2000 on daily wages basis and such engagement was made about 12 years back. At this juncture, I think it apropos to mention about the decision of the Hon'ble Apex Court in this regard, as reported in 2010 (8) SCALE-583 (Incharge Officer antoher Vs. Shankar Shetty). In the said decision, the Hon'ble Apex Court have held that:—

"It is true that the earlier view of this court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past there has been a shift in the legal position and in a long line of cases, this court has consistently taken the view that relief by way reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice".

The Hon'ble Apex Court have further held that:—

"Industrial Disputes Act 1947/Section 25F/Daily wage/Termination of service in violation of section 25(F)/Award of monetary compensation in lieu of reinstatement/Respondent was initially engaged as daily wage by appellants in 1978/His engagement continued for about 7 years intermittently up to 6-9-85/Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure

prescribed in Sec. 25(F) of the Act/Labour Court rejected respondents claim: holding that Section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination 6-9-85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal-Whether an order of reinstatement will automatically follow in a case where engagement of a daily wager has been brought to an end in violation of Section 25(F) of the Act-Allowing the appeal-held:

A. The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 year intermittently up to September 6, 1985 i.e. about 25 years back. In a case such as the present one it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion the compensation of Rupees one lakh (Rs. 1,00,000) in lieu of reinstatement shall be appropriate, just and equitable”.

11. Applying the principles enunciated by the Hon'ble Apex Court in the above mentioned decision to the present case in hand and taking the entire facts and circumstances of the case into consideration. I think that the reliefs of reinstatement in service and payment of back wages will not be justified and instead, monetary compensation would meet the ends of justice. In my considered opinion, the compensation Rs. 15,000 (Rupees fifteen thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:—

ORDER

The action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah) in terminating the services of Shri Narendra Jairam Khotale w.e.f. 30-8-2000 is illegal, improper & unjustified. The workman is entitled for monetary compensation of Rs. 15,000 in lieu of reinstatement. He is not entitled for any other relief.

The party no. 1 is directed to pay the compensation of Rs. 15,000 to the workman within one month from the date of Publication of the award in the official gazettee.

J. P. CHAND, Presiding Officer

नई दिल्ली, 7 अगस्त, 2012

क्र.आ. 2796.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम डिस्ट्रिक्ट मैनेजर, बान्द्रा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या सी.जी.

आई.टी./एन.जी.पी./61/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 7-8-2012 को प्राप्त हुआ था।

[सं. एल-40012/148/2001-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

—New Delhi, the 7th August, 2012

S. O. 2796.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/61/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between The Telecom District Manager, Bhandara and their workman, which was received by the Central Government on 7-8-2012.

[No. L-40012/148/2001-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/61/2001

Date: 16-7-2012

Party No. 1 : The Telecom District Manager,
Sanchar Nigam Limited, Sanchar
Bhavan, Bhandara- 441 904 (MS)

Versus

Party No. 2 : Shri Avdesh Kumar Parmeshwar
Ram, R/o. At Gonditola, Teh. &
Distt. Gondia, Maharashtra- 441 601

AWARD

(Dated: 16th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the Industrial dispute between the employers, in relation to the management of The Telecom District Manager, Bhandara and their workman, Shri Avdesh Kumar Parmeshwar Ram, for adjudication, as per letter No. L-40012/148/2001-IR (DU) dated 30-8-2001, with the following schedule:—

“Whether the action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah) in terminating the services of Shri Avdesh Kumar Parmeshwar Ram w.e.f. 30-8-2000 is legal, proper & justified? If not, to what relief the said workman is entitled?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Avdesh Kumar Parmeshwar Ram, (“the workman” in short), filed the statement of claim and the management of the Telecom

Distt. Manager, Bhandara, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was a permanent workman of Party No. 1 and he was appointed on daily wages on June, 1987 as a Labour and he was doing the maintenance and repair of old cables under over all supervision of the S.D.E. Cables, Gondia and working under the immediate supervision of cable jointers, who were permanent employees of Party No. 1 and he was maintaining daily work diary, which was regularly counter signed by the cable jointer and his salary was being paid on ACG-17 form, after verification of the same by the cable jointer and SDE, Gondia and from June, 1987, he worked continuously and acquired the status of permanent workman on completion of 240 days of service and the Party No. 1, terminated his services high handedly on 30-8-2000, without and notice, in utter disregard to the principles of natural justice and violation of the provisions of Section 25-F of the Act and as such termination of his services was illegal and he raised the Industrial dispute before the ALC (Central) II, Nagpur and the Party No. 1 in its written comments filed before the ALC, falsely alleged that he was not appointed by it and he was appointed by the contractor, who was doing the contract work of laying new cables at Gondia and during the conciliation proceedings, the statement of Shri M.N. Meshram, Sub-Divisional Officer, Telecom, on behalf of the Party No. 1 was recorded by the ALC and in his statement, Shri Meshram admitted that he was engaged in his office and the work mentioned by him in the "daily work diary" was carried out by the department and payment of wages to the labour was being made on ACG-17 form, whenever the work was done by the labour, which clearly show that he was engaged by Party No. 1 on daily wages and not by the contractor and during the conciliation, the ALC directed the Party No. 1 to produce the ACG-17 forms, but Party No. 1 failed to produce the same and as the conciliation proceedings failed, failure report was submitted to the Central Government by the ALC and the Government has referred the Industrial dispute to this Tribunal for adjudication.

The further case of the workman is that he had requested the Party No. 1 and other higher authorities to regularize his services, but his services were not regularize, instead his services were terminated w.e.f. 30-8-2000 and such termination was by way of victimization and the work, which he was doing is of permanent nature and on the application, submitted by him on 25-11-2000 to the Chief General Manager, Shri S.M. Elamkar and Shri D.G. Nikhade, both permanent cable jointers of Party No. 1 had certified about his working in the office of S.D.O. Gondia and payment was being made to him on ACG-17 Form and he had worked for 1769 days, from June, 1987 to August, 2000.

The workman has prayed to reinstate him in service with continuity and full back wages.

3. The Party No. 1 in its written statement, by denying the allegations made in the statement of claim has pleaded *inter alia* that the workman was never in its employment and as such, question of his termination does not arise and in view of its expansion in maintenance work i.e. underground cable laying and other maintenance work, as per its policy, it had called for tenders from private contractors and tender contracts were issued to respective private contractors and one such contract of under-ground cable laying was given to the contractor, "Atul Engineering" and the said contractor had engaged casual labours from time to time, as per his requirement and the workman is one such casual labour engaged by Atul Engineering for executing the contract work awarded to them and as a matter of fact, the workman and four other labours were engaged by Atul Engineering and after completion of work, it seems, Atul Engineering did not engage the workman and the other labours and there was no nexus of master and servant relationship between it and the workman and Atul Engineering admitted the said fact before the A.L.C. and he had been paid his wages as per law till the date of his disengagement. The further case of the Party No. 1 is that it did not maintain any record with respect to the employment of the workman, since he was never in its employment and it had a policy decision not to engage any casual labour and it had been duly registered with the Assistant Labour Commissioner as a principle employer and had obtained a license to that effect on 13-11-1990 and subsequently on 25-5-1999 and annual returns in form XXV, in respect to the contractors engaged by it is regularly submitted to the ALC (Central) II, Nagpur and the ALC during his visit on 17-3-1990 and on 15-4-1999, under the provisions of contract Labour (R & A) Act, found that no casual labour was engaged by it and the work diary produced by the workman was prepared by him and the same has neither been certified nor signed by any competent authority and the signatures on the said work diary are not by competent authority vested with managerial and administrative power.

The further case of the Party No. 1 is that the workman was never appointed by it on daily wages on the post of labour and he is not a workman within the meaning of the Act and the workman is not entitled to any relief.

4. In the rejoinder, the workman has pleaded that the alleged certificate issued by Atul Engineering, is a false document and Atul Engineering issued the false certificate in collusion with Party No. 1.

5. In support of his claim, the workman has examined himself as a witness, besides placing reliance of documentary evidence. The examination-in-chief of the workman is on affidavit. The workman in his evidence has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has stated that no appointment letter was issued from Telecom department in his favour and he has submitted daily work diary which

has been signed by cable jointer D. G. Nikhare and he had not received any call for interview and he also did not receive any letter from the employment exchange for the service. He has denied the suggestion that he was engaged by the contractor, Atul Engineering for laying cable. He has also admitted that he did not receive any termination order.

6. One Deonath Motinath Manwatkar, SDE (Legal) has been examined as a witness on behalf of the Party No. 1. In his examination-in-chief, which is also on affidavit, he has reiterated the facts mentioned in the written statement. This witness has also proved the certificate of registration obtained from the ALC, the license granted in favour of Atul Engineering, particulars of the contractors engaged by the party No. 1, list of workers worked for Atul Engineering and letter dated 23-3-1999 of ALC Nagpur as Exts. M-II to M-VII respectively. In his cross-examination, this witness has stated that he cannot say if the petitioner was working from February 1999 to August 2000 and Mr. Elamkar and Shri D. G. Nikhare was supervising as cable jointers and the document annexure-1 bears the signatures of Mr. Elamkar and Shri D. G. Nikhare and annexure-1 is the copy of the application submitted by the petitioner to the Chief General Manager, Telecom for regularisation and in that application, the petitioner has mentioned the period of his engagement as February, 1999 to August, 2000 and Mr. M. N. Meshram, SDO has given his statement before the ALC. This witness has further admitted that the Telecom department for the first time got registration certificate on 25-5-1999 and Ext. M-III, the licence was granted to M/s. Atul Engineering on 19-8-1999 and prior to 19-8-1999, M/s. Atul Engineering was not given any contract by the Telephone department. This witness has admitted that the petitioner was engaged by the Telecom department prior to giving work to M/s. Atul Engineering and the inspection made by the ALC on 17-3-1999 was prior to the engagement of Atul Engineering as a contractor and Ext. M-VI it has been mentioned that 401 male and 12 female workers were employed by the department directly on the date of inspection and no document has been filed by the management to show about the approval of M/s. Atul Engineering as a contractor by Telecom District Manager, Bhandara or that there was any agreement between Atul Engineering and Telecom department regarding giving of work order to Atul Engineering to supply labours and accordingly Atul Engineering supplied labours and payment was made to Atul Engineering by the Telecom department for the same.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed on daily wages on June, 1987 by party no. 1 as a labourer for doing the departmental work of maintenance and repair of old cables under SDE, cables, Gondia and the workman worked under the immediate supervision of the cable jointers and over all supervision of the SDE, Gondia

and he was maintaining the daily work diary, which was counter signed by the cable jointers and wages was being paid to the workman under ACG-17 form and on 30-9-2000, the services of the workman was terminated, in violation of the provisions of section 25-F of the Act and as such, the order of termination is illegal and the workman was never engaged by any contractor and from the evidence on record, it is clear that to avoid its responsibility, Party No. 1 took a false plea of engagement of the workman by the contractor and Party No. 1 failed to produce the ACG-17 forms, inspite of the direction of the ALC during conciliation and the documents produced by the management have been manufactured with collusion with M/s. Atul Engineering and as the order termination of the services of the workman is illegal, he is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was argued by the learned advocate for the Party No. 1, that the workman was never appointed on daily wages basis on the post of labour by Party No. 1 and as the workman was never in the employment of Party No. 1, the question of his termination does not arise at all and Party No. 1 had issued contract to Atul Engineering for laying underground cable and the said contractor had engaged the present workman and four other workers for executing the contract work awarded to them and after completion of the work, the workman was not engaged by the said contractor anymore and there was no master and servant relationship between Party No. 1 and the workman and from the evidence on record including the documents filed by the Party No. 1, it is clear that the workman was engaged by Atul Engineering and he was never appointed by Party No. 1 and as such, the workman is not entitled to any relief.

In support of the submission, the learned advocate for the Party No. 1 placed reliance on the decisions reported in (2008) 3 SCC-571 (Himmat Singh Vs. ICI India Ltd.) and AIR 2001 S.C. 3527 (Steel Authority of India Ltd. Vs. National union water front workers and others).

9. In view of the stands taken by the parties, the first point for consideration is as to whether the workman was engaged as a labour on daily wages by the Party No. 1 or he was a contract labour as claimed by Party No. 1.

Perused the record including the pleadings of the parties and evidence produced by them, both oral and documentary. Admittedly, all the documents filed by the Party No. 1 regarding giving of contracts to Atul Engineering relate to the year 1999. The witness examined on behalf of the Party No. 1 has admitted the same. The workman has claimed that he was maintaining the daily work diary and the same was being counter signed by the cable jointers, who were the permanent employee of the Party No. 1. Party No. 1 in the written statement in para 18 has stated that the work diary produced by the workman was prepared by him and the same was not certified or signed by any competent

authority. The said pleading shows that Party No. 1 has not denied about the maintenance of the daily work diary by the workman and about counter signature of the same by the cable jointers. It is clear from the daily work diary and other evidence on record including the admission of the witness of the Party No. 1 that the workman was engaged by the Telecom department prior to the giving of work to M/s. Atul Engineering as a labour on daily wages and he was not engaged by the contractor.

It is clear from the evidence on record including the daily work diary that the workman had completed 240 days of work in the preceding 12 calendar months of the date of his termination i.e. 30-8-2000 and the termination of the services of the workman was done, without compliance of mandatory provisions of section 25-F of the Act. So, the termination of the services of the workman on 30-8-2000 is illegal.

10. The next question for consideration is as to what relief or reliefs the workman is entitled to. Admittedly the engagement of the workman was daily wages basis. Such engagement was not done in accordance with the Recruitment Rules of Party No. 1. Though the workman has claimed that he worked from June 1987 till 30-8-2000 the documents filed by him show that he was engaged for the period from 1-2-1999 till 30-8-2000 on daily wages basis and such engagement was made about 12 years back. At this juncture, I think it apropos to mention about the decision of the Hon'ble Apex Court in this regard, as reported in 2010 (8) SCALE-583 (Incharge Officer antoher Vs. Shankar Shetty). In the said decision, the Hon'ble Apex Court have held that:—

"It is true that the earlier view of this court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past there has been a shift in the legal position and in a long line of cases, this court has consistently taken the view that relief by way reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice".

The Hon'ble Apex Court have further held that:—

"Industrial Disputes Act, 1947/Section 25F/Daily wages/Termination of service in violation of section 25(F)/Award of monetary compensation in lieu of reinstatement/Respondent was initially engaged as daily wages by appellants in 1978/His engagement continued for about 7 years intermittently up to 6-9-85/Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure

prescribed in Sec. 25(F) of the Act/Labour court rejected respondents claim : holding that section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination 6-9-85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal-Whether an order of reinstatement will automatically follow in a case where engagement of a daily wagger has been brought to an end in violation of Section 25(F) of the Act-Allowing the appeal-held:

A The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wages in 1978 and his engagement continued for about 7 year intermittently up to September 6, 1985 i.e. about 25 years back. In a case such as the present one it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion the compensation of rupees one lakh (Rs. 1,00,000) in lieu of reinstatement shall be appropriate, just and equitable".

11. Applying the principles enunciated by the Hon'ble Apex Court in the above mentioned decision to the present case in hand and taking the entire facts and circumstances of the case into consideration, I think that the reliefs of reinstatement in service and payment of back wages will not be justified and instead, monetary compensation would meet the ends of justice. In my considered opinion, the compensation Rs. 20,000 (Rupees twenty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered:—

ORDER

The action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah) in terminating the services of Shri Avdesh Kumar Parmeshwar Ram w.e.f. 30-8-2000 is illegal, improper and unjustified. The workman is entitled for monetary compensation of Rs. 20,000 in lieu of reinstatement. He is not entitled for any other relief.

The Party No. 1 is directed to pay the compensation of Rs. 20,000 to the workman within one month from the date of Publication of the award in the Official Gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2797.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकाम डिस्ट्रिक्ट मैनेजर, बान्द्रा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ

संख्या सी.जी.आई.टी./एन.जी.पी./62/2001) को प्रकाशित करती है जो केन्द्रीय सरकार को 7-8-2012 को प्राप्त हुआ था।

[सं. एल-40012/149/2001-आईआर (डीयू)]

सुरेंद्र कुमार, अनुभाग अधिकारी

New Delhi, the 7th August, 2012

S. O. 2797.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/62/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between The Telecom District Manager, Bhandara and their workman, which was received by the Central Government on 7-8-2012.

[No. L-40012/149/2001-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/62/2001 Date: 16-7-2012

Party No. 1 : The Telecom District Manager,
Sanchar Nigam Limited, Sanchar
Bhavan, Bhandara- 441 904 (MS)

Versus

Party No. 2 : Shri Suresh Laxmanrao Bawanthade
R/o. At & Po: Kudaya, Tah. &
Distt. Gondia, Maharashtra-441 601

AWARD

(Dated: 16th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the Industrial dispute between the employers, in relation to the management of the Telecom District Manager, Bhandara and their workman, Shri Suresh Laxmanrao Bawanthade, for adjudication, as per letter No. L-40012/149/2001-IR (DU) dated 30-8-2001, with the following schedule:—

"Whether the action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah) in terminating the services of Shri Suresh Laxmanrao Bawanthade w.e.f. 30-8-2000 is legal, proper & justified? If not, to what relief the said workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Suresh Laxmanrao Bawanthade, ("the workman" in short), filed the statement of claim and the management of the Telecom

Dist. Manager, Bhandara, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was a permanent workman of Party No. 1 and he was appointed on daily wages on 15-4-1997 as a Labour and he was doing the maintenance and repair of old cables under over all supervision of the S.D.E. cables, Gondia and working under the immediate supervision of cable jointers, who were permanent employees of Party No. 1 and he was maintaining daily work diary, which was regularly counter signed by the cable jointer and his salary was being paid on ACG-17 Form, after verification of the same by the cable jointer and SDE. Gondia and from 15-4-1997, he worked continuously and acquired the status of permanent workman on completion of 240 days of service and the Party No. 1, terminated his services high handedly on 30-8-2000, without any notice, in utter disregard to the principles of natural justice and violation of the provisions of Section 25-F of the Act and as such termination of his services was illegal and he raised the industrial dispute before the ALC (Central) II, Nagpur and the Party No. 1 in its written comments filed before the ALC, falsely alleged that he was not appointed by it and he was appointed by the contractor, who was doing the contract work of laying new cables at Gondia and during the conciliation proceedings, the statement of Shri M.N. Meshram, Sub-Divisional Officer, Telecom, on behalf of the Party No. 1 was recorded by the ALC and in his statement, Shri Meshram admitted that he was engaged in his office and the work mentioned by him in the "daily work diary" was carried out by the department and payment of wages to the labour was being made on ACG-17 Form, whenever the work was done by the labour, which clearly show that he was engaged by Party No. 1 on daily wages and not by the contractor and during the conciliation, the ALC directed the Party No. 1 to produce the ACG-17 Forms, but Party No. 1 failed to produce the same and as the conciliation proceedings failed, failure report was submitted to the Central Government by the ALC and the Government has referred the Industrial dispute to this Tribunal for adjudication.

The further case of the workman is that he had requested the Party No. 1 and other higher authorities to regularize his services, but his services were not regularized, instead his services were terminated w.e.f. 30-8-2000 and such termination was by way of victimization and the work, which he was doing is of permanent nature and on the application, submitted by him on 25-11-2000 to the Chief General Manager, Shri S. M. Elamkar and Shri D. G. Nikhade, both permanent cable jointers of Party No. 1 had certified about his working in the office of S.D.O. Gondia and payment was being made to him on ACG-17 Form and he had worked for 1193 days, from 15-4-1997 to August, 2000.

The workman has prayed to reinstate him in service with continuity and full back wages.

3. The Party No. 1 in its written statement, by denying the allegations made in the statement of claim has pleaded inter alia that the workman was never in its employment and as such, question of his termination does not arise and in view of its expansion in maintenance work i.e. underground cable laying and other maintenance work, as per its policy, it had called for tenders from private contractors and tender contracts were issued to respective private contractors and one such contract of under-ground cable laying was given to the contractor, "Atul Engineering" and the said contractor had engaged casual labours from time to time, as per his requirement and the workman is one such casual labour engaged by Atul Engineering for executing the contract work awarded to them and as a matter of fact, the workman and four other labours were engaged by Atul Engineering and after completion of work, it seems, Atul Engineering did not engage the workman and the other labours and there was no nexus of master and servant relationship between it and the workman and Atul Engineering admitted the said fact before the A.L.C. and he had been paid his wages as per law till the date of his disengagement. The further case of the Party No. 1 is that it did not maintain any record with respect to the employment of the workman, since he was never in its employment and it had a policy decision not to engage any casual labour and it had been duly registered with the Assistant Labour Commissioner as a principle employer and had obtained a license to that effect on 13-11-1990 and subsequently on 25-5-1999 and annual returns in form XXV, in respect to the contractors engaged by it is regularly submitted to the ALC (Central) II, Nagpur and the ALC during his visit on 17-3-1990 and on 15-4-1999, under the provisions of contract Labour (R & A) Act, found that no casual labour was engaged by it and the work diary produced by the workman was prepared by him and the same has neither been certified nor signed by any competent authority and the signatures on the said work diary are not by competent authority vested with managerial and administrative power.

The further case of the Party No. 1 is that the workman was never appointed by it on daily wages on the post of labour and he is not a workman within the meaning of the Act and the workman is not entitled to any relief.

4. In the rejoinder, the workman has pleaded that the alleged certificate issued by Atul Engineering, is a false document and Atul Engineering issued the false certificate in collusion with Party No. 1.

5. In support of his claim, the workman has examined himself as a witness, besides placing reliance of documentary evidence. The examination-in-chief of the workman is on affidavit. The workman in his evidence has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has stated that his name was not registered in the employment exchange and he was not interviewed and he did not receive any

appointment order. He has denied the suggestion that he was engaged by the contractor, Atul Engineering for laying cable. He has also admitted that he did not receive any termination order.

6. One Deonath Motinath Manwatkar, SDE (Legal) has been examined as a witness on behalf of the Party No. 1. In his examination-in-chief, which is also on affidavit, he has reiterated the facts mentioned in the written statement. This witness has also proved the certificate of registration obtained from the ALC, the license granted in favour of Atul Engineering, particulars of the contractors engaged by the party no. 1, list of workers worked for Atul Engineering and letter dated 23-3-1999 of ALC Nagpur as Exts. M-II to M-VII respectively. In his cross-examination, this witness has stated that he cannot say if the petitioner was working from February 1999 to August 2000 and Mr. Elamkar and Shri D.G. Nikhare was supervising as cable jointers and the document annexure-1 bears the signatures of Mr. Elamkar and Shri D.G. Nikhare and annexure-1 is the copy of the application submitted by the petitioner to the Chief General Manager, Telecom for regularisation and in that application, the petitioner has mentioned the period of his engagement as February, 1999 to August, 2000 and Mr. M.N. Meshram, SDO has given his statement before the ALC. This witness has further admitted that the Telecom department for the first time got registration certificate on 25-5-1999 and Ext. M-III, the licence was granted to M/s. Atul Engineering on 19-8-1999 and prior to 19-8-1999, M/s. Atul Engineering was not given any contract by the Telephone department. This witness has admitted that the petitioner was engaged by the Telecom department prior to giving work to M/s. Atul Engineering and the inspection made by the ALC on 17-3-1999 was prior to the engagement of Atul Engineering as a contractor and Ext. M-VI it has been mentioned that 401 male and 12 female workers were employed by the department directly on the date of inspection and no document has been filed by the management to show about the approval of M/s. Atul Engineering as a contractor by Telecom District Manager, Bhandara or that there was any agreement between Atul Engineering and Telecom department regarding giving of work order to Atul Engineering to supply labours and accordingly Atul Engineering supplied labours and payment was made to Atul Engineering by the Telecom department for the same.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed on daily wages on 15-4-1997 by Party No. 1 as a labourer for doing the departmental work of maintenance and repair of old cables under SDE, cables, Gondia and the workman worked under the immediate supervision of the cable jointers and over all supervision of the SDE, Gondia and he was maintaining the daily work diary, which was counter signed by the cable jointers and wages was being paid to the workman under ACG-17 Form and on 30-8-2000,

the services of the workman was terminated, in violation of the provisions of Section 25-F of the Act and as such, the order of termination is illegal and the workman was never engaged by any contractor and from the evidence on record, it is clear that to avoid its responsibility, Party No. 1 took a false plea of engagement of the workman by the contractor and Party No. 1 failed to produce the ACG-17 forms, inspite of the direction of the ALC during conciliation and the documents produced by the management have been manufactured with collusion with M/s. Atul Engineering and as the order of termination of the services of the workman is illegal, he is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was argued by the learned advocate for the Party No. 1 that the workman was never appointed on daily wages basis on the post of labour by Party No. 1 and as the workman was never in the employment of Party No. 1 the question of his termination does not arise at all and Party No. 1 had issued contract to Atul Engineering for laying underground cable and the said contractor had engaged the present workman and four other workers for executing the contract work awarded to them and after completion of the work, the workman was not engaged by the said contractor anymore and there was no master and servant relationship between Party No. 1 and the workman and from the evidence on record including the documents filed by the Party No. 1, it is clear that the workman was engaged by Atul Engineering and he was never appointed by Party No. 1 and as such, the workman is not entitled to any relief.

In support of the submission, the learned advocate for the Party No. 1 placed reliance on the decisions reported in (2008) 3 SCC-571 (Himmat Singh Vs. ICI India Ltd.) and AIR 2001 S.C. 3527 (Steel Authority of India Ltd. Vs. National Union Water Front Workers and Others).

9. In view of the stands taken by the parties, the first point for consideration is as to whether the workman was engaged as a labour on daily wages by the Party No. 1 or he was a contract labour as claimed by Party No. 1.

Perused the record including the pleadings of the Parties and evidence produced by them, both oral and documentary. Admittedly, all the documents filed by the Party No. 1 regarding giving of contracts of Atul Engineering relate to the year 1999. The witness examined on behalf of the Party No. 1 has admitted the same. The workman has claimed that he was maintaining the daily work diary and the same was being countered signed by the cable jointers, who were the permanent employee of the Party No. 1. Party No. 1 in the written statement in para 18 has stated that the work diary produced by the workman was prepared by him and the same was not certified or signed by any competent authority. The said pleading shows that Party No. 1 has not denied about the maintenance of the daily work diary by the workman and

about counter signature of the same by the cable jointers. It is clear from the daily and other evidence on record including the admission of the witness of the Party No. 1 that the workman was engaged by the Telecom department prior to the giving of work to M/s. Atul Engineering as a labour on daily wages and he was not engaged by the contractor.

It is clear from the evidence on record including the daily work diary that the workman had completed 240 days of work in the preceding 12 calendar months of the date of his termination i.e. 30-8-2000 and the termination of the services of the workman was done, without compliance of mandatory provisions of Section 25-F of the Act. So, the termination of the services of the workman on 30-8-2000 is illegal.

10. The next question for consideration is as to what relief or reliefs the workman is entitled to. Admittedly the engagement of the workman was on daily wages basis. Such engagement was not done in accordance with the Recruitment Rules of Party No. 1. The engagement of the workman was for the period from 15-4-1997 to 30-8-2000 on daily wages basis and such engagement was made about 12 years back. At this juncture, I think it apropos to mention about the decision of the Hon'ble Apex Court in this regard, as reported in 2010 (8) SCALE-583 (Incharge Officer another Vs. Shankar Shetty). In the said decision, the Hon'ble Apex Court have held that:—

“It is true that the earlier view of this court articulated in many decision reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past there has been a shift in the legal position and in a long line of cases, this court has consistently taken the view that relief by way reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice”.

The Hon'ble Apex Court have further held that:—

“Industrial Disputes Act, 1947/Section 25F/Daily wages. Termination of service in violation of Section 25F/Award of monetary compensation in lieu of reinstatement/Respondent was initially engaged as daily wages by appellants in 1978/His engagement continued for about 7 years intermittently up to 6-9-85/Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure prescribed in Sec. 25(F) of the Act/Labour Court rejected respondents claim: holding that Section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination

6-9-85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal. Whether an order of reinstatement will automatically follow in a case where engagement of a daily wager has been brought to an end in violation of Section 25(F) of the Act. Allowing the appeals—held:

- A. The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently up to September 6, 1985 i.e. about 25 years back. In a case such as the present one it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion the compensation of rupees one lakh (Rs. 1,00,000) in lieu of reinstatement shall be appropriate, just and equitable”.

11. Applying the principles enunciated by the Hon'ble Apex Court in the above mentioned decision to the present case in hand and taking the entire facts and circumstances of the case into consideration, I think that the reliefs of reinstatement in service and payment of back wages will not be justified and instead, monetary compensation would meet the ends of justice. In my considered opinion, the compensation Rs. 30,000 (Rupees thirty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered ---

ORDER

The action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah.) in terminating the services of Shri Suresh Laxmanrao Bawanthade w.e.f. 30-8-2000 is illegal, improper & unjustified. The workman is entitled for monetary compensation of Rs. 30,000 in lieu of reinstatement. He is not entitled for any other relief.

The Party No. 1 is directed to pay the compensation of Rs. 30,000 to the workman within one month from the date of Publication of the award in the Official Gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2798.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकाम डिस्ट्रीक्ट मैनेजर, बान्द्रा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सी.जी.आई.टी/ एन.जी.पी./63/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07-08-2012 को प्राप्त हुआ था।

[सं. एल-40012/151/2001-आईआर (डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 7th August, 2012

S. O. 2798.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/63/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the Telecom District Manager, Bhandara and their workman, which was received by the Central Government on 07-08-2012.

[No. L-40012/151/2001-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/63/2001

Date: 16-07-2012

Party No. 1: The Telecom District Manager, Sanchar Nigam Limited, Sanchar Bhavan Bhandara-441904 (MS)

Versus

Party No. 2: Shri Chandrakumar Munnalal Kunjan R/o. At Gonditola, Tah. & Distt. Gondia, Maharashtra-441601

AWARD

(Dated: 16th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section-10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of the Telecom District Manager, Bhandara and their workman Shri Chandrakumar Kunjan, for adjudication, as per letter No. L-40012/151/2001-JR (DU) dated 30-08-2001, with the following schedule —

"Whether the action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah.) in terminating the services of Shri Chandrakumar Munnalal Kunjan w.e.f. 30.08.2000 is legal, proper & justified? If not, to what relief the said workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Chandrakumar Kunjan, ("the Workman" in short), filed the statement of claim and the management of The Telecom Dist. Manager, Bhandara, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was a permanent workman of party no. 1 and he was appointed on daily wages on 2-12-1994 as a Labour and he was doing the maintenance and repair of old cables under over all supervision of the S.D.E. cables, Gondia and working under the immediate supervision of cable jointers, who were permanent employees of party no. 1 and he was maintaining daily work diary, which was regularly counter signed by the cable jointer and his salary was being paid on ACG-17 form, after verification of the same by the cable jointer and S.D.E. Gondia and from 02-12-1994, he worked continuously and acquired the status of permanent workman on completion of 240 days of service and the party no. 1 terminated his services high handedly on 30-08-2000, without any notice, in utter disregard to the principles of natural justice and violation of the provisions of Section 25-F of the Act and as such, termination of his services was illegal and he raised the industrial dispute before the ALC (Central) II, Nagpur and the party no. 1 in its written comments filed before the ALC, falsely alleged that he was not appointed by it and he was appointed by the contractor, who was doing the contract work of laying new cables at Gondia and during the conciliation proceeding, the statement of Shri M.N. Meshram, Sub-Divisional Officer, Telecom, on behalf of the party no. 1 was recorded by the ALC and in his statement, Shri Meshram admitted that he was engaged in his office and the work mentioned by him in the "daily work diary" was carried out by the department and payment of wages to the labour was being made on ACG-17 form, whenever the work was done by the labour, which clearly show that he was engaged by party no. 1 on daily wages and not by the contractor and during the conciliation, the ALC directed the party no. 1 to produce the ACG-17 forms, but party no. 1 failed to produce the same and as the conciliation proceedings failed, failure report was submitted to the Central Government by the ALC and the Government has referred the industrial dispute to this Tribunal for adjudication.

The further case of the workman is that he had requested the party no. 1 and other higher authorities to regularize his services, but his services were not regularize, instead his services were terminated w.e.f. 30-08-2000 and such termination was by way of victimization and the work, which he was doing is of permanent nature and on the application, submitted by, him on 25-11-2000 to the Chief General Manager, Shri S.M. Elamkar and Shri D.G. Nikhade, both permanent cable jointers of party no. 1 had certified about his working in the office of S.D.O., Gondia and payment was being made to him on ACG-17 Form and he had worked for 2045 days, from 2-12-1994 to August, 2000.

The workman has prayed to reinstate him in service with continuity and full back wages.

3. The party no. 1 in its written statement, by denying the allegations made in the statement of claim has pleaded inter alia that the workman was never in its employment and as such, question of his termination does not arise and in view of its expansion in maintenance work i.e. underground cable laying and other maintenance work, as per its policy, it had called for tenders from private contractors and tender contracts were issued to respective private contractors and one such contract of underground cable laying was given to the contractor, "Atul Engineering" and the said contractor had engaged casual labours from time to time, as per his requirement and the workman is one such casual labour engaged by Atul Engineering for executing the contract work awarded to them and as a matter of fact, the workman and four other labours were engaged by Atul Engineering and after completion of work, it seems, Atul Engineering did not engage the workman and the other labours and there was no nexus of master and servant relationship between it and the workman and Atul Engineering admitted the said fact before the A.L.C. and he had been paid his wages as per law till the date of his disengagement. The further case of the party no. 1 is that it did not maintain any record with respect to the employment of the workman, since he was never in its employment and it had a policy decision not to engage any casual labour and it had been duly registered with the Assistant Labour Commissioner as a principle employer and had obtained a license to that effect on 13-11-1990 and subsequently on 25-5-1999 and annual returns in form XXV, in respect to the contractors engaged by it is regularly submitted to the ALC (Central) II, Nagpur and the ALC during his visit on 17-3-1990 on 15-04-1999, under the provisions of contract Labour (R & A) Act, found that no casual labour was engaged by it and the work diary produced by the workman was prepared by him and the same has neither been certified nor signed by any competent authority and the signatures on the said work diary are not by competent authority vested with managerial and administrative power.

The further case of the party no. 1 is that the workman was never appointed by it on daily wages on the post of labour and he is not a workman within the meaning of the Act and the workman is not entitled to any relief.

4. In the rejoinder, the workman has pleaded that the alleged certificate issued by Atul Engineering is a false document and Atul Engineering issued the false certificate in collusion with party no. 1.

5. In support of his claim, the workman has examined himself as a witness, besides placing reliance of documentary evidence. The examination-in-chief of the workman is on affidavit. The workman in his evidence has reiterated the facts mentioned in the statement of claim.

In his cross-examination, the workman has stated that his name was not registered in the employment

exchange and he was not interviewed and he did not receive any appointment order. He has denied the suggestion that he was engaged by the contractor, Atul Engineering for laying cable. He has also admitted that he did not receive any termination order.

6. One Deonath Motinath Manwatkar, SDE (Legal) has been examined as a witness on behalf of the party no. 1. In his examination-in-chief, which is also on affidavit, he has reiterated the facts mentioned in the written statement. This witness has also proved the certificate of registration obtained from the ALC, the license granted in favour of Atul Engineering, particulars of the contractors engaged by the party no. 1, list of workers worked for Atul Engineering and dated 23-03-1999 of ALC Nagpur as Exts M-II to letter M- VII respectively. In his cross-examination, this witness has stated that he cannot say if the petitioner was working from February 1999 to August 2000 and Mr. Elamkar and Shri. D.G. Nikhare was supervising as cable jointers and the document annexure-1 bears the signatures of Mr. Elamkar and Shri D.G. Nikhare and annexure-1 is the copy of the application submitted by the petitioner to the Chief General Manager, Telecom for regularisation and in that application, the petitioner has mentioned the period of his engagement as February, 1999 to August, 2000 and Mr. M/N. Meshram, SDO has given his statement before the ALC. This witness has further admitted that the Telecom department for the first time got registration certificate on 25-05-1999 and Ext. M-III the licence was granted to M/s. Atul Engineering on 19-08-1999 and prior to 19-08-1999, M/s. Atul Engineering was not given any contract by the Telephone department. This witness has admitted that the petitioner was engaged by the Telecom department prior to giving work to M/s. Atul Engineering and the inspection made by the ALC on 17-03-1999 was prior to the engagement of Atul Engineering as a contractor and in Ext. M-VI it has been mentioned that 401 male and 12 female workers were employed by the department directly on the date of inspection and no document has been filed by the management to show about the approval of M/s. Atul Engineering as a contractor by Telecom District Manager, Bhandara or that there was any agreement between Atul Engineering and Telecom department regarding giving of work order to Atul Engineering to supply labours and accordingly Atul Engineering supplied labours and payment was made to Atul Engineering by the Telecom department for the same.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed on daily wages on 2-12-1994 by party no. 1 as a labourer for doing the departmental work of maintenance and repair of old cables under SDE, cables, Gondia and the workman worked under the immediate supervision of the cable jointers and over all supervision of the SDE, Gondia and he was maintaining the daily work

diary, which was counter signed by the cable jointers and wages was being paid to the workman under ACG-17 form and on 30-08-2000, the services of the workman was terminated, in violation of the provisions of Section 25-F of the Act and as such, the order of termination is illegal and the workman was never engaged by any contractor and from the evidence on record, it is clear that to avoid its responsibility, party no. 1 took a false plea of engagement of the workman by the contractor and party no. 1 failed to produce the ACG-17 forms, in spite of the direction of the ALC during conciliation and the documents produced by the management have been manufactured with collusion with M/s. Atul Engineering and as the order of termination of the services of the workman is illegal, he is entitled for reinstatement in service with continuity and full back wages.

8. Per contra, it was argued by the learned advocate for the party no. 1 that the workman was never appointed on daily wages basis on the post of labour by party no. 1 and as the workman was never in the employment of party no. 1, the question of his termination does not arise at all and party no. 1 had issued contract to Atul Engineering for laying underground cable and the said contractor had engaged the present workman and four other workers for executing the contract work awarded to them and after completion of the work, the workman was not engaged by the said contractor anymore and there was no master and servant, relationship between party no. 1 and the workman and from the evidence on record including the documents filed by the party no. 1, it is clear that the workman was engaged by Atul Engineering and he was never appointed by party no. 1 and as such, the workman is not entitled to any relief.

In support of the submission, the learned advocate for the party no. 1. placed reliance on the decisions reported in (2008) 3 SCC-571 (Himmat Singh Vs. ICI India Ltd.) and AIR 2001 S.C. 3527 (Steel Authority of India Ltd. Vs. National union water front workers and others).

9. In view of the stands taken by the parties, the first point for consideration is as to whether the workman was engaged as a labour on daily wages by the party no. 1 or he was a contract labour as claimed by party no. 1.

Perused the record including the pleadings of the parties and evidence produced by them, both oral and documentary. Admittedly, all the documents filed by the party no. 1 regarding giving of contracts to Atul Engineering relate to the year 1999.

The witness examined on behalf of the party no. 1 has admitted the same. The workman has claimed that he was maintaining the daily work diary and the same was being counter signed by the cable jointers, who were the permanent employee of the party no. 1. Party no. 1 in the written statement in para 18 has stated that the work diary produced by the workman was prepared by him and

the same was not certified or signed by any competent authority said pleading shows that party no.1 has not denied about the maintenance of the daily work diary by the workman and about counter signature of the same by the cable jointers. It is clear from the daily work diary and other evidence in record including the admission of the witness of the party no.1 that the workman was engaged by the Telecom department prior to the giving of work to M/s. Atul Engineering as a labour on daily wages and he was not engaged by the contractor.

It is clear from the evidence on record including the daily work diary that the workman had completed 240 days of work in the preceding 12 calendar months of the date of his termination i.e. 30-08-2000 and the termination of the services of the workman was done, without compliance of mandatory provisions of Section 25-F of the Act. So, the termination of the services of the workman on 30-08-2000 is illegal.

10. The next question for consideration is as to what relief or reliefs the workman is entitled to. Admittedly the engagement of the workman was on daily wages basis. Such engagement was not done in accordance with the Recruitment Rules of party no. 1. The engagement of the workman was for the period from 2-12-1994 to 30-08-2000 on daily wages basis and such engagement was made about 12 years back. At this juncture, I think it apropos to mention about the decision of the Hon'ble Apex Court in this regard, as reported in 2010 (8) SCALE-583 (In charge Officer another Vs. Shankar Shetty). In the said decision, the Hon'ble Apex Court have held that :—

“It is true that the earlier view of this court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages would ordinarily follow. However, in recent past there has been a shift in the legal position and in a long line of cases, this court has consistently taken the view that relief by way reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice”.

The Hon'ble Apex Court have further held that :—

“Industrial Disputes Act 1947/ Section 25F /Daily wager / Termination of service in violation of Section 25(F) Award of monetary compensation in lieu of reinstatement /Respondent was initially engaged as daily wager by appellants in 1978/His engagement continued for about 7 years intermittently up to 06-09-85/Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure prescribed in Sec. 25(F) of the Act/Labour

court rejected respondents claim: holding that Section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination 06-09-85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal-Whether an order of reinstatement will automatically follow in a case where engagement of a daily wager has been brought to an end in violation of Section 25(F) of the Act-Allowing the appeal-held :

A. The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 year intermittently up to September 6, 1985 i.e. about 25 years back. In a case such as the present one it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion the compensation of rupees one lakh (Rs. 1,00,000) in lieu of reinstatement shall be appropriate, just and equitable”.

11. Applying the principles enunciated by the Hon'ble Apex Court in the above mentioned decision to the present case in hand and taking the entire facts and circumstances of the case into consideration, I think that the reliefs of reinstatement in service and payment of back wages will not be justified and instead, monetary compensation would meet the ends of justice. In my considered opinion, the compensation Rs. 70,000 (Rupees seventythousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered :—

ORDER

The action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah) in terminating the services of Shri Chandrakumar Munnalal Kunjan w.e.f. 30-08-2000 is illegal, improper & unjustified. The workman is entitled for monetary compensation of Rs. 70,000 in lieu of reinstatement. He is not entitled for any other relief.

The party no.1, is directed to pay the compensation of Rs. 70,000 to the workman within one month from the date of Publication of the award in the official gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 7 अगस्त, 2012

का.आ. 2799.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम डिस्ट्रिक्ट मैनेजर, बान्द्रा के प्रबंधन के संबंध में नियोजकों और उनके

कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या में जी. आई.टी/ एन.जी.पी./64/2001) को प्रकाशित करती है, ज. केन्द्रीय सरकार को 7-8-2012 को प्राप्त हुआ था।

[सं. एल. 40012/152/2001-आईआर(डीयू)]

सुरेन्द्र कुमार, अनुभाग अधिकारी

New Delhi, the 7th August, 2012

S. O. 2799—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/64/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between The Telecom District Manager, Bhandara and their workman, which was received by the Central Government on 7-8-2012.

[No. L-40012/152/2001-IR (DU)]

SURENDRA KUMAR, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/64/2001 Date: 16-07-2012.

Party No. 1: The Telecom District Manager,
Sanchar Nigam Limited, Sanchar Bhavan
Bhandara-441904 (MS)

Versus

Party No. 2: Shri Baliram Pandurang Bramhankar
R/o. At Awaritola (Gudama),
PO : Adasi, Tah. & Distt. Gondia,
Maharashtra-441601

AWARD

(Dated : 16th July, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section -10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of The Telecom District Manager, Bhandara and their workman, Shri Baliram Pandurang Bramhankar, for adjudication, as per letter No. L-40012/152/2001-IR (DU) dated 30-08-2001, with the following schedule :—

"Whether the action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah) in terminating the services of Shri Baliram Pandurang Bramhankar w.e.f. 30-08-2000 is legal, proper & justified? If not, to what relief the said workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman,

Shri Baliram Pandurang Bramhankar, ("the Workman" in short), filed the statement of claim and the management of The Telecom Dist. Manager, Bhandara, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was a permanent workman of party no. 1 and he was appointed on daily wages on 25-07-1998 as a Labour and he was doing the maintenance and repair of old cables under over all supervision of the S.D.E. cables, Gondia and working under the immediate supervision of cable jointers, who were permanent employees of party no. 1 and he was maintaining daily work diary, which was regularly counter signed by the cable jointer and his salary was being paid on ACG-17 Form, after verification of the same by the cable jointer and SDE, Gondia and from 25-07-1998, he worked continuously and acquired the status of permanent workman on completion of 240 days of service and the party no. 1 terminated his services high handedly on 30-08-2000, without any notice, in utter disregard to the principles of natural justice and violation of the provisions of Section 25- F of the Act and as such, termination of his services was illegal and he raised the industrial dispute before the ALC (Central) II, Nagpur and the party no. 1 in its written comments filed before the ALC, falsely alleged that he was not appointed by it and he was appointed by the contractor, who was doing the contract work of laying new cables at Gondia and during the conciliation proceeding, the statement of Shri M.N. Meshram, Sub-Divisional Officer, Telecom, on behalf of the party no. 1 was recorded by the ALC and in his statement, Shri Meshram admitted that he was engaged in his office and the work mentioned by him in the "daily work diary" was carried out by the department and payment of wages to the labour was being made on ACG-17 Form, whenever the work was done by the labour, which clearly show that he was engaged by party no. 1 on daily wages and not by the contractor and during the conciliation, the ALC directed the party no. 1 to produce the ACG 17 Forms, but party no. 1 failed to produce the same and as the conciliation proceedings failed, failure report was submitted to the Central Government by the ALC and the Government has referred the industrial dispute to this Tribunal for adjudication.

The further case of the workman is that he had requested the party no. 1 and other higher authorities to regularize his services, but his services were not regularize, instead his services were terminated w.e.f. 30-08-2000 and such termination was by way of victimization and the work, which he was doing is of permanent nature and on the application, submitted by him on 25-11-2000 to the Chief General Manager, Shri S.M. Elamkar and Shri D.G. Nikhade, both permanent cable jointers of party no. 1 had certified about his working in the office of S.D.O., Gondia and payment was being made to him on ACG-17 Form and he

had worked for 762 days, from 25-07-1998 to August, 2000.

The workman has prayed to reinstate him in service with continuity and full back wages.

3. The party no. 1 in its written statement, by denying the allegations made in the statement of claim has pleaded inter alia that the workman was never in its employment and as such, question of his termination does not arise and in view of its expansion in maintenance work i.e. underground cable laying and other maintenance work, as per its policy, it had called for tenders from private contractors and tender contracts were issued to respective private contractors and one such contract of under ground cable laying was given to the contractor, "Atul Engineering" and the said contractor had engaged casual labours from time to time, as per his requirement and the workman is one such casual labour engaged by Atul Engineering for executing the contract work awarded to them and as a matter of fact, the workman and four other labours were engaged by Atul Engineering and after completion of work, it seems, Atul Engineering did not engage the workman and the other labours and there was no nexus of master and servant relationship between it and the workman and Atul Engineering admitted the said fact before the A.L.C. and he had been paid his wages as per law till the date of his disengagement. The further case of the party no. 1 is that it did not maintain any record with respect to the employment of the workman, since he was never in its employment and it had a policy decision not to engage any casual labour and it had been duly registered with the Assistant Labour Commissioner as a principle employer and had obtained a licence to that effect on 13-11-1990 and subsequently on 25-05-1999 and annual returns in form XXV, in respect to the contractors engaged by it is regularly submitted to the ALC (Central) II, Nagpur and the ALC during his visit on 17-03-1990 and on 15-04-1999, under the provisions of Contract Labour (R & A) Act, found that no casual labour was engaged by it and the work diary produced by the workman was prepared by him and the same has neither been certified nor signed by any competent authority and the signatures on the said work diary are not by competent authority vested with managerial and administrative power.

The further case of the party no. 1 is that the workman was never appointed by it on daily wages on the post of labour and he is not a workman within the meaning of the Act and the workman is not entitled to any relief.

4. In the rejoinder, the workman has pleaded that the alleged certificate issued by Atul Engineering is a false document and Atul Engineering issued the false certificate in collusion with party no. 1.

5. In support of his claim, the workman has examined himself as a witness, besides placing reliance of documentary evidence. The examination-in-chief of the

workman is on affidavit. The workman in his evidence has reiterated the facts mentioned in the statement of claim. In his cross-examination, the workman has stated that his name was not registered in the employment exchange and he was not interviewed and he did not receive any appointment order. He has denied the suggestion that he was engaged by the contractor, Atul Engineering for laying cable. He has also admitted that he did not receive any termination order.

6. One Deonath Motinath Manwatkar, SDE (Legal) has been examined as a witness on behalf of the party no. 1. In his examination-in-chief, which is also on affidavit, he has reiterated the facts mentioned in the written statement. This witness has also proved the certificate of registration obtained from the ALC, the licence granted in favour of Atul Engineering, particulars of the contractors engaged by the party no. 1, list of workers worked for Atul Engineering and letter dated 23-03-1999 of ALC Nagpur as Exts. M-II to M-VII respectively. In his cross-examination, this witness has stated that he cannot say if the petitioner was working from February 1999 to August 2000 and Mr. Elamkar and Shri.D.G Nikhare was supervising as cable jointers and the document Annexure-1 bears the signatures of Mr. Elamkar and Shri D.G Nikhare and Annexure-1 is the copy of the application submitted by the petitioner to the Chief General Manager, Telecom for regularisation and in that application, the petitioner has mentioned the period of his engagement as February, 1999 to August, 2000 and Mr. M.N. Meshram, SDO has given his statement before the ALC. This witness has further admitted that the Telecom department for the first time got registration certificate on 25-05-1999 and Ext. M-III, the licence was granted to M/s. Atul Engineering on 19-08-1999 and prior to 19-08-1999, M/s. Atul Engineering was not given any contract by the Telephone department. This witness has admitted that the petitioner was engaged by the Telecom department prior to giving work to M/s. Atul Engineering and the inspection made by the ALC on 17-03-1999 was prior to the engagement of Atul Engineering as a contractor and in Ext. M-VI it has been mentioned that 401 male and 12 female workers were employed by the department directly on the date of inspection and no document has been filed by the management to show about the approval of M/s. Atul Engineering as a contractor by Telecom District Manager, Bhandara or that there was any agreement between Atul Engineering and Telecom department regarding giving of work order to Atul Engineering to supply labours and accordingly Atul Engineering supplied labours and payment was made to Atul Engineering by the Telecom department for the same.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed on daily wages on 25-07-1998 by party no. 1 as a labourer for doing the departmental work of maintenance and repair of old cables under SDE, cables,

Gondia and the workman worked under the immediate supervision of the cable jointers and over all supervision of the SDE, Gondia and he was maintaining the daily work diary, which was counter signed by the cable jointers and wages was being paid to the workman under ACG-17 form and on 30-08-2000, the services of the workman was terminated, in violation of the provisions of Section 25-F of the Act and as such, the order of termination is illegal and the workman was never engaged by any contractor and from the evidence on record, it is clear that to avoid its responsibility, party no.1 took a false plea of engagement of the workman by the contractor and party no. 1 failed to produce the ACG-17 forms, in spite of the direction of the ALC during conciliation and the documents produced by the management have been manufactured with collusion with M/s. Atul Engineering and as the order of termination of the services of the workman is illegal, he is entitled for reinstatement in service with continuity and full back wages

8. Per contra, it was argued by the learned advocate for the party no. 1 that the workman was never appointed on daily wages basis on the post of labour by party no. 1 and as the workman was never in the employment of party no. 1, the question of his termination does not arise at all and party no.1 had issued contract to Atul Engineering for laying underground cable and the said contractor had engaged the present workman and four other workers for executing the contract work awarded to them and after completion of the work, the workman was not engaged by the said contractor any more and there was no master and servant relationship between party no. 1 and the workman and from the evidence on record including the documents filed by the party no. 1, it is clear that the workman was engaged by Atul Engineering and he was never appointed by party no. 1 and as such, the workman is not entitled to any relief.

In support of the submission, the learned advocate for the party no. 1 placed reliance on the decisions reported in (2008) 3 SCC-571 (Himmat Singh Vs. ICI India Ltd.) and AIR 2001 S.C. 3527 (Steel Authority of India Ltd. Vs. National union water front workers and others).

9. In view of the stands taken by the parties, the first point for consideration is as to whether the workman was engaged as a labour on daily wages by the party no. 1 or he was a contract labour as claimed by party no. 1.

Perused the record including the pleadings of the parties and evidence produced by them, both oral and documentary. Admittedly, all the documents filed by the party no.1 regarding giving of contracts to Atul Engineering relate to the year 1999. The witness examined on behalf of the party no. 1 has admitted the same. The workman has claimed that he was maintaining the daily work diary and the same was being counter signed by the cable jointers, who were the permanent employee of

the party no.1. Party no.1 in the written statement in para 18 has stated that the work diary produced by the workman was prepared by him and the same was not certified or signed by any competent authority. The said pleading shows that party no.1 has not denied about the maintenance of the daily work diary by the workman and about counter signature of the same by the cable jointers. It is clear from the daily work diary and other evidence on record including the admission of the witness of the party no.1 that the workman was engaged by the Telecom department prior to the giving of work to M/s. Atul Engineering as a labour on daily wages and he was not engaged by the contractor.

It is clear from the evidence on record including the daily work diary that the workman had completed 240 days of work in the preceding 12 calendar months of the date of his termination i.e. 30-08-2000 and the termination of the services of the workman was done, without compliance of mandatory provisions of Section 25-F of the Act. So, the termination of the services of the workman on 30-08-2000 is illegal.

10. The next question for consideration is as to what relief or reliefs the workman is entitled to. Admittedly the engagement of the workman was on daily wages basis. Such engagement was not done in accordance with the Recruitment Rules of party no. 1. The engagement of the workman was for the period from 25-07-1998 to 30-08-2000 on daily wages basis and such engagement was made about 12 years back. At this juncture, I think it apropos to mention about the decision of the Hon'ble Apex Court in this regard, as reported in 2010 (8) SCALE-583 (Incharge Officer another Vs. Shankar Shetty). In the said decision, the Hon'ble Apex Court have held that :—

"It is true that the earlier view of this court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of reinstatement with full back wages, would ordinarily follow. However, in recent past there has been a shift in the legal position and in a long line of cases, this court has consistently taken the view that relief by way reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice".

The Hon'ble Apex Court have further held that :—

"Industrial Disputes Act, 1947/ Section 25F/Daily wage/Termination of service in violation of Section 25(F)/Award of monetary compensation in lieu of reinstatement /Respondent was initially engaged as daily wage by appellants in 1978/His engagement continued for about 7 years intermittently up to

06.09.85/Respondent raised industrial dispute relating to his retrenchment alleging violation of procedure prescribed in Sec. 25(F) of the Act/Labour court rejected respondents claim. holding that section 25(F) of the Act was not attracted since the workman failed to prove that he had worked continuously for 240 days in the calendar year preceding his termination 06.09.85. On appeal, High Court directed reinstatement of Respondent into service holding that termination of respondent was illegal—Whether an order of reinstatement will automatically follow in a case where engagement of a daily wager has been brought to an end in violation of Section 25(F) of the Act—Allowing the appeal—held :

- A. The High Court erred in granting relief of reinstatement to the respondent. The respondent was engaged as daily wager in 1978 and his engagement continued for about 7 years intermittently up to September 6, 1985 i.e. about 25 years back. In a case such as the present one it appears to us that relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In our considered opinion the compensation of rupees one lakh (Rs. 1,00,000) in lieu of reinstatement shall be appropriate, just and equitable”.

11. Applying the principles enunciated by the Hon'ble Apex Court in the above mentioned decision to the present case in hand and taking the entire facts and circumstances of the case into consideration, I think that the reliefs of reinstatement in service and payment of back wages will not be justified and instead, monetary compensation would meet the ends of justice. In my considered opinion, the compensation Rs. 20,000 (Rupees twenty thousand only) in lieu of reinstatement shall be appropriate, just and equitable. Hence, it is ordered :—

ORDER

The action of the management of Telecom District Manager, Sanchar Nigam Limited, Bhandara (Mah) in terminating the services of Shri Baliram Pandurang Bramhankar w.e.f. 30-08-2000 is illegal, improper & unjustified. The workman is entitled for monetary compensation of Rs. 20,000 in lieu of reinstatement. He is not entitled for any other relief.

The party no. 1 is directed to pay the compensation of Rs. 20,000 to the workman within one month from the date of Publication of the award in the Official Gazette.

J. P. CHAND, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2800.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल

के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 2, धनबाद के पंचाट (आई डी संख्या 188/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-08-2012 को प्राप्त हुआ था।

[सं. एल-20012/163/2001-आईआर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August. 2012

S. O. 2800—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 188/2001) of the Central Government Industrial Tribunal No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workman, which was received by the Central Government on 13-08-2012.

[No. L-20012/163/2001-IR (CM-1)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2) AT DHANBAD

Present : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

Reference No. 188 of 2001

Parties : Employer in relation to the management of
Sudamdih Coal Washery of M/s. BCCL and their workmen.

Appearances :

On behalf of the workman : Mr. R. K. Mukherjee, Ld.
Advocate

On behalf of the Management Mr. D. K. Verma, Ld.
Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 13th July, 2012

ORDER

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal vide their Order No. L-20012/163/2001-IR (C-I) dt. 11th July, 2001.

SCHEDULE

“Whether the management's of BCCL, Sudamdih Coal Washery is justified in not regularising Sri Basudeo Supakar, Clerk in Grade-II as Time Keeper? If not, to what relief is the workman entitled and from what date?”

2. The case of the sponsoring union is that workman Basudeo Supakar is a permanent workman of Sudamdih Coal Washery of BCCL. He was regularised in Clerk Grade III w.e.f. 12-5-1993 from the post of Clerk (T) Cat. I as per Office Order No. 2088-92 dt. 18-5-1995. Thereafter though he was allowed to continue to work as regular Time Keeper in shift of Sri Rajeshwar Pandey hence forth as per another Office Order No. 3066-68 dt. 18/22-7-1995, thus he was placed in clerical Grade III on regular post of Time Keeper against permanent vacancy for it since earlier yet called as Reliever Time Keeper, and as per the Notesheet No. BCC/SCW/NS/96 dt. 3-10-96, he was recommended for his promotion in clerk Gr. II as Time Keeper for the reason of his working as Time Keeper for a period of three years, yet in violation of the Certified Standing Order and Sec. 9A of the I.D. Act, 1947, he was arbitrarily but suddenly directed to work as Weigh-bridge Clerk as per the Office Order dt. 20th April, 2000, and he was not brought back to his original post of Time Keeper. Many other on their pursuance and representation were brought to their original post of Time keeper, but he was again transferred to work as clerk in P. F. Section to deal with pension work as per the office order No. 5317 dt. 23-3-2001. As such his twice transfer by the Management in two different sections in a period of eleven months after his continuous working Time Keeper for about 8 years was quite illegal, malafide and discriminatory, disregarding his representation. The post of Time Keeper is of Clerk Gr. II as per N.C.W.A. In view of his working as Time Keeper for three years since prior to 3rd Oct., 1993, he deserves placement in clerk Gr. II w.e.f. 3-10-1993, thereafter his regularisation in the same Grade after six months as per the Certified Standing Order or relaxing the provision after one year w.e.f. 3-10-1994. As such the action of the Management in denying his regularisation is unjustified. The workman is entitled to it with consequential differences of wages/salary and benefits.

3. Further the Union concerned for the workman in his rejoinder categorically denied the allegations of the Management, pleading that Cadre Scheme for the purpose of regularisation is not attracted.

4. Whereas the case of the Management with specific denials is that the workman was engaged as Clerk (T) in category I. After completion of his training and performance as a Clerk Gr. III, he was regularised as clerk, Gr. III with seniority w.e.f. 12-5-1993 as per the order dt. 18-5-1995. As per the provision of Cadre Scheme, the promotion from Clerk Grade III has to be effected according to seniority subject to satisfactory performance and maintenance of good C.R. and recommendation of the D. P.C. for it serially. But due to malpractice, some local officer under the influence of powerful union leaders allow some workmen of clerical Grade III by way of regularisation through litigation in stead of promotion. In the present case, the local officer without any approval of the General Manager

allowed the workman to work as reliever Time keeper during leave and sick vacancies, tried to put him as regular time keeper, and wanted to promote him without considering the seniority panel of various senior clerks. So the claim of the sponsoring union for regularisation of the workman in clerk grade II is baseless, as he had not any valid authorisation as per the legal provision for obtain due approval from the cadre controlling authority in accordance with the Cadre Scheme. The workman was never promoted on the basis of the Departmental Promotion Committee (DPC) nor approved by the General Manager, the Cadre Controlling Authority for it. As soon as the matter came to the light, the workman was transferred to different places, and was posted as Clerk Grade III. He is not entitled to any relief.

FINDING WITH REASONING.

5. In this case, WWI Basudeo Supkar, the workman himself for the Union, and MWI R. G. Ram, the Personnel Manager for the Management have been examined.

Mr. R. K. Mukherjee, Ld. Counsel for the Union/workman submits that the main point is that the workman Basudeo Supakar since regularised as Clerk Gr. III w.e.f. 12-5-1993 as per order dt. 18-5-1995, was a permanent worker Gr. III, but he has not been working as Time Keeper and he worked as regular Time Keeper in place of Rajeshwar Pandey as per order dt. 18/22-7-1995 (Ext. W. 4) against his permanent vacancy, but his regularisation promotion as Time Keeper stands due on 3-10-1996 in Gr. II, though the workman was transferred from one department to another violating the Sec. 19A of the I.D. Act. In response to it, the contention of Mr. D. K. Verma, the Ld. Counsel for the Management inter alia is that the workman was firstly provisionally appointed as Clerk (T) Category I on compassionate ground as per the Management's letters 12/24-3-1992 and 9/11-5-1992 (Ext. W. 2 & 1 respectively) and thereafter he was regularised to the post of Clerk Gr. III w.e.f. 12-5-93 as per the office order dt. 18-5-1995 (Ext. W. 3). According to Mr. Verma, a clerk (Gr. III) is entitled to Clerk Grade subject to vacancy and D.P.C. under the Cadre Scheme which does not provide any such regularisation for it. Moreover, the workman has admittedly got his promotion to Clerk Gr. II as the office order dt. 20/21-3-2001 (Ext. W. 8), but not from 2000 without through D.P.C. as alleged by him, so the workman is not entitled to any relief.

6. On consideration of the material evidences as adduced in behalf of both the parties, and as also argued by their respective Learned Counsels, I find that the workman's claimful plea is that as per an order dt. 8-12-1994 (unproved till now) he was engaged as Reliever Time Keeper, and thereafter he was permanently regularised as Time Keeper as per order dt. 18-07-1995 (Ext. W. 4) of the Management, as he continuously worked accordingly for seven years. But his facts of engagement as Reliever Time Keeper as per order dt. 8-12-1994, and of his continuously

working as Time Keeper for seven years being unpleaded are baseless; so far as the officer order dt. 18/22-7-1995 (Ext. W. 4) is concerned. It was issued by the Project Officer, Sudamdih Coal Washery who was not the Competent Authority to allow the work as a regular Time Keeper in shift of Sri Rajeshwar Pandey rather it was temporarily issued for temporary management for which no approval was sought from the Competent Authority. Such office order issued by the Project Officer in favour of the workman is quite contrary to the Cadre Scheme of the Clerk Grade, and it can never confer on the workman any authority for his regularisation as Time Keeper all on a sudden. Apart from it, his transfer to Weight Bridge Department as Weigh Bridge Clerk and then in the P.F. Section as P.F. Clerk in the year 2000 and 2001 respectively as orally stated by the workman are the Administrative orders of the Management which are not related in any way to a change in the conditions of service of a clerkship of the present workman; so sec. 9A of the I.D. Act is quite inapplicable to the case. In the light of the aforesaid finding, the argument of Mr. R. K. Mukherjee Learned Counsel for the Union/workman appears to be quite unacceptable and unpersuasive.

Therefore, the schedule is responded as such :

the Management of M/s. BCCL, Sudamdih Coal Washery is quite legally justified in not regularising Sri Basudeo Supakar, Clerk in Grade II as Time Keeper. Hence, the workman is not entitled to any of reliefs.

KISHORI RAM, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2801.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 18/2010-11) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-08-2012 प्राप्त हुआ था।

[सं. एल-22012/91/2010-आईआर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S. O. 2801.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 18/2010-11) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the industrial dispute between the Management, of Western Coal Field Ltd. Coal Estate, Wani North Area, WCL, and their workmen, received by the Central Government on 13-08-2012.

[No. L-22012/91/2010-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/ 18/2010-11

Date: 1-8-2012.

Party No. 1: The Chairman-cum-Managing Director,
Western Coal Fields Ltd., Coal Estate,
Civil Lines, Nagpur.

The Chief General Manager.
Wani North Area, WCL, PO : Bhalar.
Tah. Wani, Distt. Chandrapur.

Versus

Party No. 2 : Shri Ramnagina Thug R/o. Shiv Nagar,
Kandri Post. Kanhan, Taluka Kamptee,
Distt. Nagpur.

The President/ Secretary
Lalzanda Coal Mines Mazdoor
Union (CITU), CWS Tadali Branch,
PO : Urjagram Tadali, Distt. Chandrapur

AWARD

(Dated : 1st August, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Ramnagina Thug, for adjudication, as per letter No. L-22012/91/201 IR (CM-II) dated 21-02-2011, with the following schedule :—

"Whether the action of WCL management in denying re-employment to Shri Ram Nagina Thug as per memorandum of Settlement dated 13-06-2003 is legal & justified on the ground of his being unfit to work due to poor vision? If not, can the relief of employment to his son be granted to workman?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ramnagina Thug, ("the workman" in short), filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he was appointed as a tub loader in Inder Colliery in 1982 and continued as such till the year 1999 and while working in the said colliery, on 28-01-1997, he met with an accident, as a result of which, his left index finger was imputed by operation and he was declared unfit for duty for six months and he came to be dismissed from service, by order dated 30-08-1999, on the basis of a

departmental enquiry, on the charge of his unauthorized absence from duty for the period from 20-05-1998 to 04-07-1998 and thereafter, he was given appointment as a tub loader purely on temporary basis for one year vide appointment order dated 26-09-2000 and he was allowed to join at Mahakali Colliery, Chandrapur with effect from 02-11-2000 and he was automatically terminated from services after one year i.e. in October, 2001 and a demand was raised on his behalf by a registered union for his reinstatement and the matter was considered by party no.1 and party no. 1 agreed to the proposal for his reinstatement subject to some terms and conditions and in terms of the settlement, party no. 1 issued the appointment and advised him to report for duties to Chief General Manager, Wani North Area. It is further pleaded by the workman that as per the Mines Act, 1957, a person who has undergone a medical examination on a date not earlier than five years shall be deemed to have undergone an initial Medical examination and the last date of his Medical examination shall be taken to be the date of his initial medical examination under the rules made under the Act and the appointment given to him by party no. 1 was not a fresh appointment, but a reinstatement in terms of settlement and there was also no pre-condition in the settlement that his re-employment should be subjected to initial medical examination clearance and as such, as per rules, there was no cause for referring him to the Medical authorities for obtaining medical clearance prior to taking him on duty, but party no. 1 sent him for medical examination to Rajiv Ratan Hospital, Guggus, Wani Area, by order dated 21-06-2003 and by a communication dated 11-07-2003, he was intimated that he was found unfit for work by the medical authorities and he approached the party no.1 to reconsider their decision and allow him to join duty in terms of the settlement, but party no. 1, instead of taking him on duty, sent him for further medical examination by the Apex Medical Board and once again intimated him that the Apex Board also found him unfit for work due to poor vision of left eye and thereafter, he made repeated representations individually and also through the unions, but to no avail, so he was constrained to prefer a writ petition bearing no. 2715/2006 before the Hon'ble High Court praying for a direction to party no. 1 to take him on duty in terms of the memorandum of settlement and office order both dated 13-06-2003 and the Hon'ble High Court was pleased to dispose of the petition with the following directions :—

“Learned Advocate Mr. Lahiri states that the petitioner is willing to make an application for absorption/appointment of petitioner on a post, which the employer may identify, where the person with visual handicap can be accommodated, and all details in that regard be ascertained and notified by the respondent. According to Learned Advocate Mr. Lahiri, the petitioner would make such application within fifteen days from today.

The candidature of the petitioner can be considered in due course after the exercise is complete.

We, therefore, direct the respondents to carry out the exercise required under the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, within three months from the date of receipt of writ of this court.

If the petitioner is found eligible, his application be considered in accordance with law and on its own merits.”

It is also pleaded by the workman that according to the directions of the Hon'ble Court, he made a representation seeking his absorption on duty on 07-04-2007 and in response to the same, party no.1 asked him in issuing a letter to submit the disability certificate from the medical Board constituted by the State Government for taking necessary action at their end and accordingly he presented himself before the Medical Board, Government Medical College, Nagpur for medical examination on 28-06-2007 and the Medical Board referred him to Board of Referees, Department of Ophthalmology, Grant Medical College, Sir J.J. Hospital, Mumbai for further examination of his eye sight and he appeared before the Board of Referees in Mumbai on 26-09-2007 for further medical examination and the Board after his examination declared him fit to perform duties of labour and by letter dated 29-10-2007, the President, Medical Board, Government Medical College, Nagpur issued a final medical examination report declaring him fit for duty and on 30-10-2007, he submitted the certificate issued by the competent Medical Board for taking further action in the matter by party no. 1 and after a gap of more than two months, the party no. 1, by order dated 11-01-2008 intimated him that he is not fit for employment as per the stipulations provided under the Mines Act, Rules and Regulations made there under, as certified by the Competent Medical Board and that he is not having disability in order to cover under the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 for re-employment and his claim for re-employment is rejected.

The further case of the workman is that he filed an application under the RTI Act and obtained the information about his medical examination and as per the report submitted by the President, Medical Board, Government Medical College, Nagpur his visual acuity was right eye-6/12 and left eye-6/18 and the workers, namely Jagannath Utter Kumar (Tramner), Nilkanth Gulab (Driller), Mohan Dondha (R/Loader) and Ghanshyam Sitaram Amrute (Opnr.), who have worse vision acuity than himself (Workman) are working in underground mines of WCL and in view of the Medical certificate dated 14-07-2008, he is entitled for employment in the mines and also at par with other similarly placed employees and party no. 1 cannot be permitted to discriminate against him. It is further pleaded by the workman that he filed writ petition bearing no. 4919 of 2008 before the Hon'ble Court by an order dated 24-03-2009, disposed the writ petition with a direction to party no. 1 to produce him before the Medical Board of

WCL, one of whose members must be a renowned Ophthalmologist, who should examine him and should issue appropriate certificate about his vision and the Hon'ble High Court also directed that the Board should also consider the certificate dated 14-07-2008 issued by the Medical Board, Government Medical College and on receipt of the certificate, the party no. 1 should take appropriate decision about his appointment without further delay and accordingly, he presented himself before the Medical Board constituted by the party no. 1 and on 10-05-2009, he received communication from the party no. 1 with the intimation that he was found unfit for duty due to poor vision of both the eyes as per the Medical Board constituted by them and though the Hon'ble High Court had directed for considering the certificate issued by the Government Medical College, Nagpur, it is clear from the impugned order that the party no. 1 deliberately did not place before the Board, the detailed report given by the Board of Referees, Department of Ophthalmology, based on which, the Medical Board of Government Medical College, Nagpur had declared him fit for duty and the party no. 1 acted in breach of the order passed by the Hon'ble High Court and the party no. 1 shifted their stand from time to time to deny employment to him, taking advantage of the inconsistent medical reports submitted by the Board constituted by them, so he was constrained once again to file writ petition bearing no. 3830/2009, before the Hon'ble High Court at Nagpur and the Hon'ble High Court did not pass any order considering the fact that he has appropriate remedy under the Act and as such, he was allowed to withdraw the petition with liberty to resort appropriate remedy under the Industrial Law, with the direction that all questions are left open and therefore, he approached the Assistant Labour Commissioner, Chandrapur for conciliation, but as party no. 1 remained adamant, the conciliation failed and lastly the reference was made.

It is further pleaded by the workman that only due to having of poor vision on left eye as per the medical check-up, it cannot be said that he is unfit to do work in WCL and what is required to be shown is continuous ill health, which is not there on record and during the period of the service from 1982 till 2001 as a tub loader, he had undergone medical check-up periodically and had been found fit to perform his duty and the party no. 1 have also allowed other employees having worse vision acuity as compared to him to work in mines and under such circumstances, the decision of the party no. 1 to deny him reinstatement is wholly unfair, discriminatory and smacks of arbitrariness and party no. 1 failed to implement the Memorandum of settlement dated 13-06-2003 in the matter of giving him re-employment and the disability of poor vision was apparently acquired during his service period as such, the action of party no. 1 in not giving him re-employment violates section 47 of Persons with Disabilities (Equal Opportunities, Protection

of Rights and Full Participation) Act, 1995 and as such, he is entitled to be reinstated in service with full back wages.

3. The party no. 1 in the written statement has admitted about the workman working as a tub loader in Inder Colliery from 11-01-1982 till the year 1999 and that the workman was given rest for six months and the workman was dismissed from services, after holding departmental enquiry, for the proved misconduct committed by him. However, it is pleaded by party no. 1 that the workman did not challenge the said dismissal order at any point of time and after raising the dispute by the workman, a settlement was arrived at in form 'H' as prescribed under the Act and after entering into the settlement, the workman was given employment and posted at Chandrapur Area and even as per the said settlement, the workman was to undergo medical test to verify his medical fitness and accordingly, he underwent the medical examination and before undergoing the medical test, the workman did not lodge any protest and the workman was not reinstated in service, but he was given re-employment, as per the terms and conditions of the settlement and as the workman failed to fulfill the conditions of re-employment, his service was terminated w.e.f. 03-11-2001 and after the termination on 03-11-2011, AITUC union raised a dispute and there was an agreement to give the workman re-employment as tub loader on trail basis and he was posted at Kumbharkhani UG mines, Wani north Area, after entering into a fresh settlement in form 'H' dated 13-06-2003 and as there was break in service, the said settlement contained a condition that the workman would have to pass the medical fitness test, before joining duties and as there was a gap between the termination and re-employment of the workman and as per the provisions of the Mines Rules, the workman was required to undergo the medical test and accordingly, he was sent for his IME to Rajiv Ratan Hospital, Ghugus on 21-06-2003 and after his medical test, the workman was declared unfit to work in the mines, due to poor vision and the workman challenged the IME report and submitted a certificate issued by the District Civil Surgeon, Nagpur and on his own request, the workman was referred to the Apex Medical Board on 19-03-2004, but he was declared unfit by the Apex Medical Board also, so he was not allowed to join duty and the workman has raised false pleas, only with the intention to prejudice the mind of the court and to gain misplaced sympathy. The party no. 1 has admitted that about the workman filing writ petition no. 2715/2006 before the Hon'ble High Court and that the Hon'ble High Court by order dated 29-03-2007 to have directed them to carry out the exercise required under the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 within 3 months from the date of the order. It is pleaded by party no. 1 that the workman failed to submit any disability certificate of the Medical Board, even after two months of time and therefore, by letter dated 07-07-2007, they intimated the workman their inability to consider his application dated 07-04-2007 for re-employment

and inspite of repeated reminders, the workman did not submit the medical certificates and the workman presented himself for medical examination before the Medical Board on 28-06-2007 and he was referred to Board of Referees and the Board, by the letter dated 26-09-2007 declared him to be fit to do the work of labour and as the workman was medically fit, the provisions of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are not applicable to him and he cannot claim advantage under the said Act and under such circumstances, by letter dated 11-01-2008, they intimated the workman that he cannot be re-employed as he was medically unfit as per the norms under the Mines Act and Rules and the workman filed writ petition no. 4919/2008, before the Hon'ble High Court against the order dated 11-01-2008 for rejecting the case of re-employment and the Hon'ble High Court, by order dated 24-03-2009, disposed of the petition with a direction to produce the workman before the Medical Board, one of the members of which must be a renowned Ophthalmologist, for his medical examination and as per the direction of the Hon'ble High Court, the workman was presented before the Medical Board, which included the renowned Ophthalmologist Dr. Sood, and the Board examined the workman and found him medically unfit. Party no. 1 have further pleaded that the workman was to work in mine and as per the Mines Act, and as he was found not fit for his duties, the management did not take the risk of giving employment to him and the details of the other employees as mentioned in the statement of claim have no relevance with the claim of the workman and the workman has not made available the documents to verify the correctness of the said claim and the workman was examined by the experts in the field and after considering the report dated 14-07-2008 issued by the Medical Board, Government Medical College, the opinion was given by them and it is not true that they did not place the detailed report dated 14-07-2008 before the Medical Board and the Medical report was consistent, and as per the orders of the Medical Board, they took the decision about not employing the workman, as he was declared unfit by the Board and writ petition no. 3830/2009 filed by the workman before the Hon'ble High Court was withdrawn by him on his own accord, as the Hon'ble High Court was not inclined to entertain the said petition and as per the provisions of the Mines Rules, Rule 29 B of the Mines Rules, a workman is required to be medically examined periodically after lapse of five years and as per the Statutory Provisions, the workman was referred to Medical Board for IME and he was found unfit due to poor vision and therefore, he was not reinstated, hence the same cannot be said to be discriminatory, illegal and arbitrary and the provisions of Persons with Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995 do not apply to the workman and the workman is not entitled to any relief.

4. It is necessary to mention here that besides placing reliance on documentary evidence, about which reference

has been made by both the parties in their claim and the written statement, the workman examined himself as a witness in support of his claim. The workman filed his examination-in-chief on affidavit. However, when the further examination-in-chief of the workman was taken by the learned advocate for the workman and he was asked as to whether he knows about the contents of the affidavit, the workman categorically denied of having any knowledge of the contents of the affidavit. Hence, the oral evidence of the workman cannot be taken into consideration for deciding the reference.

5. The schedule of reference consists of two issues. The first issue is as to whether the workman is entitled for re-employment as per the memorandum of settlement dated 13-06-2003. The other issue is that if the workman is not entitled for re-employment, then whether the relief of employment can be granted to his son.

First of all, the issue of denial of re-employment to the workman by the party no. 1 is necessary to be considered.

So far the said issue is concerned, it is clear from the pleadings of them that there is no dispute between the parties that the workman was working as a tub loader at Inder colliery and he was dismissed from services by order dated 30-8-1999, on the basis of the disciplinary enquiry conducted against him on the charge of remaining unauthorized absence from duty and the workman did not challenge the punishment of his dismissal from service. It is also not disputed that the workman was reappointed as a tub loader purely on temporary basis for one year as per order dated 26-09-2000 and he worked as a tub loader at Mahakali colliery w.e.f. 02-11-2000 till October, 2001 and there was a settlement between the party no. 1 and the workman for re-employment of the workman as loader on trial basis at Kumbharkhani project of Wani North Area with some terms and conditions and that the workman was sent for his medical examination on 21-06-2003 to Rajiv Ratan Hospital, Ghugus of Wani Area and after his medical examination, the workman was found unfit for duty due to poor vision and on the request of the workman, he was again sent to the Apex Medical Board for his medical examination and after medical examination, the Apex Medical Board also found him unfit for work due to poor vision. There is also no dispute between the parties about the workman approaching the Hon'ble High Court in Writ petitions no. 2715 of 2006, 4919 of 2008 and 3850 of 2009 and the direction given by the Hon'ble Court in the said writ petitions and production of the medical examination certificate issued by the Medical Board, Medical College, Nagpur basing on the report submitted by the Board of Referees in Mumbai, by the workman, in which he was declared fit to work as a Labourer. It is also not disputed that as per the direction of the Hon'ble High Court in writ petition no. 4919/2008, the workman was examined by the Medical Board constituted by the party no. 1 and the

Medical Board found him unfit for duty for poor vision of both the eyes.

The documents on record shows that as per the direction of the Hon'ble High Court, the workman was examined by the Medical Board consisting of a renowned Ophthalmologist on 22-04-2009 and he was found unfit due to poor vision of both eyes and the Board also found that there was no further improvement of his vision with glasses in both the eyes and for that the workman was not given re-employment.

According to the workman, there was no condition in the Memorandum of Settlement dated 13-06-2003 regarding the medical examination and as per the Mines Act, 1952, a person who had undergone a Medical examination on a date earlier than five years, should be deemed to have undergone the initial medical examination and the last date of his initial medical examination should be taken to be the date of his initial medical examination under the rules and his case was not a case of fresh appointment, but was reinstatement in terms of settlement and as such, there was no reason for referring him for his medical examination.

However, I find no force in the contention raised by the workman in view of Chapter-IV-A of the Mines Rules. Chapter IV-A of the Mines Rules deals with medical examination of persons employed or to be employed in Mines. Rule 29-A of the Mines Rules provides that provisions of Chapter IV-A apply to persons who are employed purely on temporary or casual basis for a continuous period not exceeding six months, which means that the said Chapter applies to all other persons employed or to be employed in mines, except the persons appointed on casual or temporary basis not exceeding six months. It is never the case of the workman that his re-appointment was not exceeding six months. The workman has also not produced any evidence to show as to when his last medical examination was done, while in service. So, it was necessary for party no. 1 to send the workman for medical examination as per Rule 29-B of the Mines Rules, before his re-employment. It is clear from the materials on record that the workman was lastly examined by the Medical Board on 24-03-2009 and he was found unfit for duty, due to poor vision in both eyes and that there was no improvement of his vision with glasses in both the eyes. As the workman is found medically unfit for re-employment, party no. 1 was justified in not giving him re-employment.

The workman has cited the cases of some other employees, who are in service of party no. 1, in spite of poor vision like him or worse than him. However, on perusal of the documents filed by the workman, it is found that the workman is not at par with those employees as with glasses, those employees have better vision. For example, though the visual acuity of Ghanshyam without glass in both the eyes was 6/36, with glass the same was 6/6. Likewise, the

visual acuity of employee Mohan Dhonde was 6/24 in both eyes without glass, with glass the same was, right eye-6/18 and left eye-6/9. The visual acuity of Nilkanth Gulab without glass was right eye-6/12 and left eye-6/18 and the said employee was referred to Ophthalmologist. The visual acuity of Jagannath without glass was right eye-6/24 and left eye-6/18 and with glasses right eye-6/18 and left eye-6/12 and he was referred to the specialist in eye and medicine. The vision of acuity of the workman as found by the Medical Board on 22-04-2009 is right eye-6/18 and left eye 6/24 and that there is no further improvement of the vision with glasses in both eyes. It is not the case of the other employees, there is nothing on record show that their vision acuity cannot be improved with use of glasses. Moreover, it is found that with glasses, the vision acuity of the other employees was within the Medical Standard of fitness as prescribed under the Rules. Hence, the submission made by the workman regarding discrimination against him fails.

6. So far the application of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 is concerned, it is necessary to mention here that the Hon'ble High Court in writ petition no. 2715/2006 have been pleased to direct that, "If the petitioner is found eligible, his application be considered in accordance with law and on its own merit." So, now it is to be considered as to whether the provisions of the said Act are applicable to the case of the workman. Section 47 of the said Act says that, "No establishment shall dispense with or reduce in Rank, an employee who acquires a disability during his service." So for applicability the provision of the said Act, the first and foremost requirement is that the employee must have acquired the disability during his service. However, it is not disputed that the workman was dismissed from service by order dated 30.08.1999 for proved misconduct of remaining unauthorized absence and that he did not challenge such order of dismissal either before the competent authority or in any competent court of law. So, the order of dismissal has become final. There is no evidence on record that the disability of poor vision was acquired by the workman during his services. Moreover, the services of the workman were neither dispensed with nor he was reduced in rank due to acquiring of the disability. Hence, question of applicability of the provisions of the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to the case of the workman does not arise. So it is found that there is no illegality in denying re-employment to the workman by the party no. 1.

7. So far the second issue regarding giving of employment to the son of the workman is concerned, it is to be mentioned here that in the schedule of reference, the necessary provisions, rules or law under which such relief can be granted to the son of the workman has not been mentioned.

However, there are provisions in the NCWA to give employment to one dependent of a worker, who becomes permanently disabled while in service. Such provisions do not apply to the dependents of a workman, who is not in service or who is already dismissed from service. As in this case, the workman is found unfit for his re-employment in service after his dismissal from service, the provisions as provided in the NCWA for employment of one of the dependents of the workman do not apply to his son. Hence, the relief of employment cannot be given to the son of the workman. Hence, it is ordered. —

ORDER

The action of WCL management in denying re-employment to Shri Ram Nagina Thug as per Memorandum of Settlement dated 13.06.2003 is legal & justified on the ground of his being unfit to work due to poor vision. The relief of employment to his son cannot be granted to workman.

J. P. CHAND, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2802.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार के.वी.आई.सी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 60/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-42012/37/2004-आईआर (सीएम- II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2802.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/06) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Khadi & Village Industries Commission, and their workmen, received by the Central Government on 13-8-2012.

[No. L-42012/37/2004-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/60/06

PRESIDING OFFICER : SHRI MOHD SHAKIR HASAN

The General Secretary,
Khadi Commission Karmchari Union,
Ichhawar Road, Sehore,
Madhya Pradesh

... Workman

Versus

The Project Manager,
Khadi & Village Industries Commission,
Ichhawar Road,
Sehore,
Madhya Pradesh

... Management

AWARD

Passed on this 27th day of July 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-42012/37/2004-IR (CM-II) dated 19-9-2006 has referred the following dispute for adjudication by this tribunal:—

“Whether the demand of the Union for proper classification, pay scale/ wages, leave of the labourers on regularization at par with the other skilled workmen is legal and justified? If yes, to what relief are the workmen entitled?”

2. The case of the Union, in short, is that the Union is a registered trade Union. All the workers are members of the Union. It is stated that the workman Cat-IV are working for the last seven years and are skilled labours but they are being paid wages of unskilled labours. Similarly workman Cat-II works of Fitter but is getting pay of Driver (Mechanic). It is stated that the workers have been regularized but even then they are not getting wages, different type of leaves and other amenities as per the declaration of Khadi and village Industries Commission (in short KVIC). Whereas the management has provided all facilities and benefits to the Electrical Supervisor and Store Incharge working in the same organization. It is stated that the workmen have not properly designated as Machine Operator, Fitter and Electrician as per their nature of jobs and are not being paid wages accordingly of skilled labours. The Union is said to have placed all these demands before the management which are being provided to other employees of the organization but the management is discriminating them with other employees. It is submitted that the reference be answered in favour of the Union.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, inter alia, is that the management is engaged in the processing of Cotton and its product and has not violated the law nor has discriminated the workmen of the Union with other employees. It is stated that the workmen are engaged on daily wages and are industrial workers. They have been deputed to work as per the need of the establishment. They are getting the pay scale of Rs 2550-3220 plus other allowances. Thus each worker is getting a total wage of Rs. 5753 per month which is much higher wages than the skilled labour of Rs. 2808, apart from pay and allowance, they are getting more other benefits such as paternity leave, special leave for family planning,

Medical Leave, Annual Medical reimbursement, washing allowance, conveyance allowance and canteen allowance as per model standing orders of Factory Act. It is stated that the workers who are performing the job of Fitter and Electrician are getting the pay scale of Rs.3050-4590 and other allowances instead of Rs.2550-2800 and other allowances. It is submitted that the claim of the Union is not justified and is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication-

I. Whether the demand of the Union' for proper classification, pay scale/wages, leave of the labourers on regularization at par with other skilled workmen is legal and justified?

II. To what relief the workmen are entitled?

5. Issue No. I

There is no case of the Union that the workmen who are industrial workers and are doing work in Khadi and village Industries Commission, Sehore (in short KVIC) are getting less pay/wages and other benefits with similarly situated industrial workers working in another organization. Rather the case of the Union is that these workmen, who are industrial workers and are engaged in the production are discriminated from the other employees engaged in administration and office work of the same organization in the matter of pay scale/wages, leave and other benefits whereas the management has contended that these industrial workers are getting more pay and allowance than the Collectorate rate admissible to skilled labors and are governed by the model standing order of the Factory Act. Moreover the office staffs of KVIC are governed by KVIC rules.

6. Now let us examine the evidence adduced by the Union. Shri Raj Kumar Bairagi is General Secretary of Khadi Commission Karamchari Union and a workman himself. He has stated the pay scale and allowance and other benefits of the Industrial workers and office and Administrative workers to show the discrimination.

7. For convenience the pay scales and the allowance given to both classes of workers are indicated below—

Industrial workers	
Name of the post	Pay scale
1. Industrial worker Cat-II	Rs. 3050-75-3590-80-4590
2. " Cat-III	Rs. 2750-70-3800-75-4400
3. " Cat-IV	Rs. 2550-55-2660-3200

Other office employees working in the same project

a. Asstt. Accountant	Rs. 4500-125-7000
b. Electrical Supervisor	-do-
c. Steno II	Rs. 4000-100-6000

d. L.D.C	Rs. 3050-75-3950-80-4590
e. Driver	-do-
f. Peon	Rs. 25 50-55-2660-60-3200

Other benefits given to both class of workers

Particulars of benefits	Office staff	Industrial workers
Earned Leave	30 days	1 day in 20 working days (max 15 days)
Medical Leave	10 days	3 days
C.L	10 days	7 days
National Holidays	17 days	9 days
Restricted Holidays	2 days	Nil
L.T.C	As per rule	Nil
Other allowances and benefits	As per rules of the commission	As per Factory Act.

8. The Union witness Shri Bairagi has further stated that the same service condition to all the employees of the same project has been refused by the management. He has also stated that the workmen be also given proper designation according to their job. However he has admitted in cross-examination that the work of factory workers are different from the work of office employees. He has stated that the leaves applicable under Factory Act is not applicable to the office employees. This shows that they are getting other leaves as well which are not applicable to the employees of the office. Thus it is clear from his evidence that the work of both the categories of workers are different and both are governed by the different rules and therefore they cannot be equated on the principles of "Same pay for same work".

9. The Union has filed documentary evidence in the case. The management has admitted those documents. Exhibit W/1 is the list of national holidays admissible to the office employees who are governed by the rules of the Commission. Exhibit W/2 is the appointment letter dated 28-3-96 of Shri Raj Kumar Bairagi. This is filed to show that he was appointed as Industrial worker Cat-II as Industrial worker daily wages employee. This goes to show that he was employed in the Factory in the side of Industrial Trading Unit. The service conditions and the nature of work was obviously different From the employees of the office and they cannot compare with each other. Exhibit W/3 is also an appointment letter of another Industrial worker namely Shri Anup Singh Prajapati. The conditions are same as discussed above. Thus the documentary evidence of the Union also shows that the Industrial workers cannot be compared with office employees and they cannot claim the same pay and allowances as are admissible to office employees.

10. On the other hand, the Management has also adduced oral and documentary evidence in the case.

due notice to the workman by registered post. Exhibit M/7 is the enquiry report. This is filed to show that the Enquiry Officer found the charges as proved against the workman and submitted his report. Exhibit M/8 is the recommendation to the Competent authority for removal from service. Exhibit M/9 is the removal order passed by the Disciplinary Authority. The documentary evidence shows that the principle of natural justice was followed in conducting the departmental enquiry and the workman was duly informed. I find that the departmental enquiry conducted by the management is legal and valid.

6. The management has also examined the Enquiry Officer Shri Lt. N.C. Uppal in the case. He is presently working as Sr. Under Manager (Mining). He has supported the case of the management. He has stated that he issued several memos to the workman who on receipt of the said memos did not attend the enquiry proceeding. Thereafter there was no option except to conduct the enquiry in absence of the workman. His evidence is un rebutted. There is no reason to disbelieve his evidence. His evidence also shows that sufficient opportunities were given to the workman after giving proper information and there was no violation of the principle of natural justice. This issue is accordingly decided against the workman and in favour of the management.

7. Issue No. II

Considering the discussion made above and on the basis of oral and documentary evidence adduced by the management, it is clear that the evidence is un rebutted and it is established that the workman was unauthorized absent from duty and the misconduct had been proved by the management in the departmental proceeding. There is no need to lead evidence by the management to prove misconduct in the Tribunal. This issue is also decided against the workman and in favour of the management.

8. Issue No. III

It is clear from the evidence on record that the workman was habitual absentee. There is no other evidence to impeach the credit of the evidence of the management. Under the circumstances, I find that the punishment awarded to the workman is proportionate to the charges proved against him. I do not find any reason to interfere in the order of punishment. This issue is accordingly answered.

9. Issue No. IV

On the basis of the discussion made above, I find that the workman is not entitled to any relief and the action of the management in terminating the services of the workman is justified. Accordingly the reference is answered.

10. In the result, the award is passed without any order to costs.

11. Let the copies of the award be sent to the

Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2804.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 242/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/53/2000-आईआर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2804.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 242/2000) of the Central Government Industrial Tribunal/Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the the management of Hindustan Lalpeth Open Cast Sub Area of WCL, and their workmen, received by the Central Government on 13-8-2012

[No. L-22012/53/2000-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/242/2000

Date: 3-8-2012

Party No. 1

The Sub Area Manager,
Hindustan Lalpeth Open Cast
Sub Area of WCL, PO: Lalpeth,
Distt. Chandrapur (MS)

Versus

Party No. 2

Secretary,
National Colliery Mazdoor Congress,
Br. Ballarpur, Dr. Ambedkar Nagar,
PO: & Tah.: Ballarpur,
Distt. Chandrapur (MP)

AWARD

(Dated: 3rd August, 2012).

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL, and their workmen, Shri Satish

Pocham Dasarwar and 30 others, for adjudication, as per letter No.L-22012/53/2000-IR (CM-II) dated 9-8-2000, with the following schedule:-

“Whether the action of the management namely Sub Area Manager, Hindustan Lalpeth Underground Sub Area of Western Coalfields Ltd. in not regularizing She Satith Pocham Dasarwar and 30 others is legal & justified? If not, to what relief the workmen are entitled and from which date? What other directions are necessary in the matter?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the Union, “National Colliery, ‘Workers Congress”, (“the union” in short) filed the statement of claim on behalf of the 31 claimants (as per the list enclosed), (“the claimants” in short) and the management of WCL (“Party No. 1” in short) filed its written statement.

The case of the claimants as presented by the union in the statement of claim is that the 31 claimants had been working and performing the job of removing muck, malma and cleaning of fallen coal in the underground mines, as well as removal of garbage from the drain, cleaning of domestic garbage and carrying of such garbage to fix point and unloading the same there for disposal and though the jobs assigned to them are of permanent nature and come under the category of prohibited item of contract, the management engaged contractors for the name sake with the malafide intention to deprive the claimants of their legitimate rights of getting permanency and direct employment in WCL and the claimants had been given vocational training before being sent for underground work and duty slips were being given to them by the Manager/ Under Manager In charge of the shift, which reveal their employment in underground for such jobs and “B” forms of the claimants were also maintained by the party no. 1, which were statutorily required to be maintained under rules 41,51,77 A(C) of the Mines Rules and though the claimants and the union raised the issue of regularisation of their services time and again with the local management and with the higher authorities, their services were not regularized on the other hand, party no.1 cleverly deployed other contractor by stopping the work of the claimants and employing the new set workers from January, 1999 and the action of the party no. 1 was in violation of the provisions of the Act and violation of the established law of the land and as such, the claimants are entitled for reinstatement in service with full back wages and other benefits of permanent workman with retrospective effect.

3. The party no.1 in the written statement has pleaded that the union has very little or no following at all in Hindustan Lalpeth U.G Mine and the union has not and acquired representative character, and to acquire representative character the union must have at least 25%

the workers of the establishment as its members and as such, the union is not entitled to raise the dispute. It is further pleaded by party no.1 that the claimants were contract workers and they were never appointed by it as its employees nor wages were paid by it to the claimants and there was no relationship of employer and employees between it and the claimants, warranting adjudication in the matter and for performing odd and sporadic jobs, like garbage removal, cleaning of drains, cleaning of septic tanks, soak pits, cleaning of surface drains and removal of malma/muck along the haulage roadways and travelling roads etc, it had been floating tenders from time to time and offering contracts to the lowest tenderers on the agreed rates and each of these jobs is independent and purely of temporary nature and one of such contractors had been Shri Ramaswamy Puredi and after execution of the contract and issuance of work order, the said contractor had been engaging his own men for the performance of the contracted jobs and he had been submitting his bills for the quantum of jobs done by him and he had been paid lumpsum amounts after scrutiny and passing of the bills by the concerned dealing department and the jobs which were got done through the contractor were neither of permanent nature nor prohibited by the government notification and therefore, the very basis of the claim of the union that the claimants had been deployed through contractor in permanent and prohibited categories of jobs is not tenable and if the demand of the union is conceded, it will amount of taking away the right of the employers to engage contractors in non-prohibited categories affecting their trade and business.

The further case of the party no.1 is that the claimants were never employed by the management and they were contractor's men and the jobs claimed to have been performed by them are neither of permanent nature nor the same are under the prohibited categories and the case law cited is not applicable to this case and the documents filed as annexure “C” are unauthorized and manipulated and the same do not contain the signature of the competent authority and any person, who is deployed in the mine, either as a direct worker of the company or a contractor's man, he is required to be given statutory vocational training for safety reasons and merely on the basis of undergoing such training, one can not claim that he is an employee of the employer and the contractor was engaged sometimes to do non-prohibited jobs in the underground and no person can be allowed to go to the underground, unless he is permitted by the Manager and the same is a statutory obligation and as because, the contractor's men were deployed to do some contractual jobs underground, the same cannot be said to have created any legal right in their favour to be treated as departmental employees and “Form B” register is statutorily required to be maintained for its employees working in the mines and such register is not required to be maintained for the workers of the contractor and annexure ‘F’ is totally

unauthorized and fabricated with ulterior motive and such forms were used by the contractor without prior permission or authority and the same does not bear the signature of the Manager of the Mine, who is the competent person to sign the same and the same appears to have been signed by the contractor, Ramaswamy Puredi and the space meant for the signature of the Manager on the format has been super-imposed by putting in rubber stamp, which amounts to tampering with the record and the name of the contractor, Ramaswamy Puredi also appears at serial no. 18 of the list enclosed with the reference claiming his regularisation as an employee of the company and the statement is not only vague, but also, far from truth and the contract with Ramaswamy Puredi was for the period from 24-06-1998 to 23-06-1999, so after expiry of the said period, his contract automatically got terminated and as such, there was no question of violation of the provisions of the Act and the claimants are not entitled to any relief.

4 In the rejoinder, the union has pleaded that it had raised the industrial dispute before the ALC (C), Chandrapur on behalf of the claimants and the party no. 1 had raised objection before the ALC, about the union representing the claimants, but the ALC rejecting such objection, forwarded the report of failure of conciliation to the Central Government for making a reference and the Central Government has referred the dispute to this Tribunal for adjudication and as such, the party no. 1 has no right to challenge the same again before this Tribunal. It is also pleaded by the union that the claimants were engaged in underground mine and also on surface and in the underground mine, they were engaged for loading of coal into the tubs from the face and also fallen coal and pushing the loaded and unloaded tubes under the supervision, control and direction of the supervisors and they were also working under the supervision, control and direction of the sanitary inspector of the management and the 31 claimants were employed in permanent nature and prohibited categories of work and Ramaswamy Puredi was a workman himself and the so called contractor did not produce a licence under the provision of contract labour (Abolition and Regulation) Act, 1970 and the management also did not issue form V and violated the provisions of Central Labour (Abolition and Regulation) Central Rules, 1971 and as the claimants were engaged by the contractor without holding any licence, they would be deemed to have been engaged by the management itself as per the principles enunciated by several Hon'ble High Courts and by notification dated 09-12-1976, the Central Government had prohibited engagement of contract labour for sweeping, cleaning, dusting and watching of building owned or occupied by establishments in respect of which, the appropriate Government under the Contract Labour Act, 1970 is the Central Government w.e.f. 01-03-1977 and in other areas of WCL, the services of sweeping and cleaning mazdoor have been regularized by the management and provisions were made by the JBCCI

in NCWA-III for abolition of contract labour and the Secretary, JBCCI had also issued implementation instructions no. 35 dated 17-07-1984 for implementation of the same and similar provisions were also made in NCWAs IV, V and VI and workmen of saw mill and clay cartridges makers in Ballarpur, Wani Area had been regularized by the management and as such, the claimants are entitled for the reliefs claimed in the statement of Claim.

5. Besides placing reliance on documentary evidence, both the parties led oral evidence in support of their respective claims. Shri Ramaswamy Puredi, and Shri Satish Pocham Dasarwar have been examined as witnesses on behalf of the union. Shri D. Ramdeorao and Shri Devendra Pude have been examined as the two witnesses on behalf of party no.1. The examination-in-chief of all the witnesses examined by the parties is on affidavit. The evidence of the two witnesses examined on behalf of the union is reiteration of the facts mentioned in the statement of claim and rejoinder. Likewise, the evidence of the two witnesses examined on behalf of the party no. 1 is in the line of the facts mentioned by the party no. 1 in the written statement. In the cross-examination, Shri Ramaswamy Puredi, the witness no. 1 for the union has stated that he worked in the capacity of a contractor and from January 1996 to January 1997, he worked on contract basis. He has further admitted that the attendance sheets for January 1996 to January 1997 do not have the signature of the Sanitary Inspector or the Personal Manager.

Witness Satish Pocham in his cross-examination has admitted that he was coming for work through Ramaswamy Puredi and he has not filed any document to show that he was receiving payment directly from the office of the management and he was working as garbage cleaner and was performing the work of removal of garbage, cleaning of drain and cleaning of domestic garbage and carrying such garbage and unloading the same for disposal.

Though the two witnesses examined on behalf of the party no. 1 were cross-examined at length, nothing of substance has been brought out in their cross-examination to disbelieve their testimonies.

6. At the time of argument, it was submitted by the learned advocate for the union that it is well settled by the Hon'ble Apex Court in a number of decisions that the Central Government has enough power under section 10 of the Act to refer the dispute for adjudication and on such reference, the dispute is to be treated as industrial dispute and the same has to be adjudicated and frivolous objection raised by employer that the same is not an industrial dispute to exhaust the workman is liable to be quashed. It was further submitted that the party no. 1 is a "state" within the meaning of Article 12 of the Constitution and its action must be not only fair but also reasonable

and in the NCWAs, provisions were made for abolition of contract labour and the Central Government vide notification no. S.O. 4888 dated 01-02-1975 has prohibited the employment of contract labour in regard to raising or raising cum selling coal, coal loading and unloading, over burden removal and earth cutting, sub coke manufacturing, and driving of stone drifts and miscellaneous stone cutting underground and vide notification no. S.O. 779 dated 09-12-1976, the Central Government has prohibited the engagement of contract labour for sweeping, cleaning, dusting and watching of buildings owned or occupied by establishment of the Central Government and the Government also prohibited the engagement of contract labour on jobs which are of permanent in nature and on the basis of such direction of the Central Government, the management of WCL had regularized the services of 12, 14 and 1 contract labourers in Majri, Ghugus and Ballarpur Area respectively and the management had also regularized some mud pallet maker and sweepers of different areas but, the present claimants though were at par with such contract labours, they were not regularized. It was further submitted by the learned advocate for the union that Shri Puredi was a workman himself and he was drawing money from the management for the work of dusting, cleaning, sweeping, garbage cleaning, drain cleaning and disposal of garbage on the basis of attendance and was paying the money to the individual claimant under the supervision and presence of management representative and the attendance of the claimants was being marked by the Sanitary Inspector and the evidence on record fully supports the claim of the union and the claimants are entitled for reinstatement in service and regularisation.

In support of such contentions, the learned advocate for the union placed reliance on the decisions reported in 2007 (115) FLR 427 (Mohan Mahato Vs. M/s. Central Coalfields Limited), AIR 1968 SC-1413 (Gopal Krishnaji Ketkar Vs. Mohd. Haji Latif), AIR 1986 SC-132 (H.D. Singh Vs. Reserve Bank of India), AIR 1994 SC-853 (S.P.C. Naidu Vs. Jagannath), 1998 SCC-(L & S) 170 (Ratan Singh Vs. Union of India), 2001 LAV-IC 322 (International Airport Authority Employees Union Vs. International Airport Authority of India), 2008 II-CLR-147 (UP State Electricity Board Vs. Puranchan Pandey) and AIR 2000 SC-469 (National Engineering Industries Ltd. Vs. State of Rajasthan).

7. On the other hand, it was submitted by the learned advocate for the party no. 1 that the union is not competent to raise the industrial dispute on behalf of the claimants as the union not acquired a representative character and it does not have 25% of workers of Hindustan Lalpeth Colliery, as its members. In support of such contention, the learned advocate for the party no. 1 placed reliance on the decisions of the Hon'ble court reported in AIR 1966 S.C.-182 (Workmen of Dharma Pal

Prem Chand vs Dharma Pal Premchand Sangndhi) and AIR 1970 SC-737 (Workmen of Indian Express Newspapers Pvt. Ltd. vs The Management of Indian Express Newspapers Pvt. Ltd.)

It was further submitted by the learned advocate for the party no. 1 that the entire claim of the union is based on the concept of engagement of contract labours on prohibited category and perennial nature of jobs and there is no doubt that the concerned persons were engaged by the contractor to execute the contract entered into by him with the management of WCL and if it was not so, the questions of breach of the Contract Labour (Abolition and Regulation) Act, 1970 and prohibitory order issued by the Central Government and making of provisions in the NCW As about not engaging contractor in perennial nature of jobs would not have been raised by the union and the evidence adduced by the union also clearly shows that the claimants were engaged as contract labours by Shri Puredi and the documents filed by party no. 1 also show that Shri Ramaswamy Puredi was the contractor and he had engaged the claimants as labourers to execute the contract work and there was never any direct employer-employee relationship between the party no. 1 and the claimants. It was also submitted that from the documents filed by the parties, it is clear that there was valid contract between party no. 1 and contractor, Shri Puredi and the works assigned to the contractor were not against the provision made by the Government or the provisions of NCWAs and the contractor was directed to produce license as per the Contract Labour (Regulation and Abolition) Act, 1970 ("the CLRA" Act in short) in case of engagement of more than 19 persons and there is no evidence on record to show that more than 19 labourers were engaged by the contractor and even if it is held that there was breach of statutory provisions of the CLRA Act, of 1970 still then the claimants, who were contract workers cannot be treated as employees of party no. 1 and at the best, the employers could be prosecuted under the penal provision of the Act of 1970. In support of such contentions, the learned advocate for the party no. 1 placed reliance on the decisions reported in 2011 LAV IC-3656 (Steel Authority of India Ltd. Vs. N. U. Waterfront Workers) and 1992 LAV IC-1992 (Dinanath and others Vs. National Fertilizers Ltd.).

It was further submitted by the learned advocate for the party no. 1 that from the documents on record, it can be found that the present claimants were not at par with the other workers who have been regularized by the party no. 1 and those workers were casual workers engaged by the party no. 1 and they were not contract workers and there is a vast difference between a departmental casual worker and a contract worker and as such, the regularisation of the workers as mentioned in the statement of claim has no relevance and no comparison can be made between the claimants and worker who were regularized

by party no. 1 and the claimants are not entitled for any relief.

So, keeping in view the principles enunciated by the Hon'ble Courts in the decisions cited by the learned advocates for the parties, now the present case in hand is to be considered.

8. Perused the pleadings of the parties. The claimants nowhere in the statement of claim have claimed that they were appointed or engaged by the party no. 1 and the date their appointment or engagement and the name of the post or category of the same and they have also not mentioned the mode of their engagement i.e. casual, temporary or daily wages basis. The claimants have not claimed that they were the workman under party no. 1. Rather, it has been pleaded that they were engaged as contract labours.

On perusal of the documents filed by the union on behalf of the claimants and so also the party no. 1, it is found that all the documents show that the claimants were engaged by the contractor, Shri Pureddi. The documents filed by the union have been maintained and signed by Shri Pureddi. From the pleadings of the union, it is also clear that the engagement of the claimants was through the contractor and they were contract labours and after the expiry of the contract of Shri Pureddi, other contractor was given the work. It is also clear from the materials on record that the works which were given on contract basis to Shri Pureddi were not coming within the prohibited jobs as mentioned in the two notifications made by the Central Government dated 01-02-1975 and 09-12-1976 or the provisions as made in the NCWAs. Admittedly, no license was produced by Shri Pureddi for engagement of contract labours as required under the CLRA Act. However, Shri Pureddi and the witness no.2 examined on behalf of the union in their cross-examination have categorically admitted that the claimants were contract labours.

The Hon'ble Apex Court in the decision reported in 1992 LAV IC-75 (Supra) have held that, "Principal employer or contractor - Non-compliance with provisions of registrations or license- Only consequence is there exposure to prosecution Contract Labour employed doesn't become direct employees of principal employer."

So applying the above principles to the present case in hand, even if it is held that the claimants were engaged by the contractor, Shri Pureddi as contract labourers without obtaining the necessary license, still then, they cannot be treated as direct employees of party no. 1.

9. It is well settled in a number of decisions by the Hon'ble Apex Court that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, it cannot be said that the relationship of master and servant is created between the principal employer and the contract

labour. Even a combined reading of the definition of the terms "contract labour", "establishment" and "workman" does not show that a legal relationship between a person employed in an industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that a combined reading of the terms "establishment" and workman shows that a workman engaged in an establishment would have direct relationship with the principal employer as a servant of master. But that is true of a workman could not be correct of contract labour. The provisions of contract labour (Regulation and Abolition) Act, 1970 do not contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the Act on issuing notification under section 10 (1) of the CLRA Act a fortiori much less can such a relationship be found to exist from the Rules and the forms made there under. It is clear from the pleadings of the union on behalf of the claimants in the statement of claim and so also from the evidence on record, that the claimants were never employed by the party no.1 and they were employed by the contractor. It is the definite stand taken by workmen that they had been working under the contractor. It would, thus, in my opinion not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law and such mutually destructive plea should not be allowed to be raised even in an industrial adjudication. Hence, it cannot be said that the workman was the claimants were of the principal employer.

10. So far the contention raised by the learned advocate for the union regarding the regularisation of other workers who were at par with the claimants is concerned, on perusal of the documents filed by the union itself, it is found that the other workers who had been regularized in service were not contract worker as like the claimants and they were engaged by the party no. 1 as casual workers or sweepers directly. So the case of the present claimants cannot be compared with the workers, who had been regularized by party no.1 and it cannot be said that there was any discrimination against the claimants. Hence, the contention raised by the learned advocate for the union has no force.

On perusal of the material on record including the documents produced by the parties the oral evidence and the discussions made above it is found that the claimants were/are not entitled for regularisation. Hence, it is ordered:-

ORDER

The action of the management namely Sub Area Manager, Hindustan Lalpeth Underground Sub Area of

Western Coalfields Ltd. in not regularizing. She Satith Pocham Dasarwar and 30 others is legal & justified. The claimants are not entitled for any relief.

J. P. CHAND, Presiding Officer

LIST OF WORKMEN INVOLVED IN THE DISPUTE

1. Sh. Satish Pocham Dasarwar
2. Sh. Samaiya Pocham Dasarwar
3. Sh. Tiparap Rabi Malaya
4. Sh. Gognlr Odal
5. Sh. Bangari Ramesh Kumaraiya
6. Sh. Dodale Prakasam Balaiya
7. Sh. Bangarli Raju Sommiyer
8. Sh. Dasarpu Rabindra Pochaiya
9. Sh. Jirla Rajaiah Maisaiyr
10. Sh. Mittapelli Kumaraiyr yelligea
11. Sh. Areppelli Malaiyer Rajiru
12. Sh. Kampalli Ramesh Madanaiya
13. Sh. Edunuri Kumar Swamy Kumaraiya
14. Sh. Srinivas Pochan Dasarpu
15. Sh. Dasarpu Kumairaya Aneush
16. Sh. Sanjur Malaiya VejjaIr
17. Sh. Pursottam Gataiya Pocham
18. Sh. Ramaswamy Papaiya Purreddi
19. Sh. Rodder Sampati Durgaya
20. Sh. Tiparap Sampati Malaiya
21. Sh. L. Pardre
22. Sh. Mohan Gotaiya Purusottam
23. Sh. Kashipeta Swamy Lingaiya
24. Sh. Kalagora Suresh Raiyalingu
25. Sh. Parasgonda Rabi
26. Sh. Ramesh Asalugaddi
27. Sh. Sridhar Laxaman Reddy
28. Sh. L. Madan Pocham Purusottam
29. Sh. R. Godipalli
30. Sh. S. P. Kamur
31. Sh. R. K. Poditi

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2805.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 40/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-08-2012 को प्राप्त हुआ था।

[सं. एल-20012/102/1995-आईआर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S. O. 2805.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/1996) of the Central Government Industrial Tribunal-cum-Labour Court, No.2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 13-08-2012.

[No. L-20012/102/1995-IR (CM-1)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

PRESENT : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 40 of 1996

PARTIES : Employers in relation to the management of Bararee Colliery of M/s BCCL and their workmen.

APPEARANCES:

On behalf of the workman : None

On behalf of the Management : Mr. D. K. Verma,
Ld. Advocate

State : Jharkhand

Industry : Coal

Dhanbad, Dated the 20th July, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their order No. L-20012/102/95-IR (Coal-1), dated 19-3-1996.

SCHEDULE

“Whether the action of the management of Bararee Colliery of M/s BBCL in wrongful and unjustified dismissing from service of Shri Ram Chandra Koiri, Explosive Carrier is justified? If not, to what relief the concerned workman is entitled?”

2. The case of the sponsoring union is that workman Ram Chandra Koiri, has an unblemish 30 years record of

his service as Explosive Carrier since his engagement. He was issued the chargesheet dt. 9-12-1992 by the Management for certain alleged misconduct to which he submitted his explanation, denying the charge. After domestic Enquiry by one of the officer of the Management, he was dismissed from services of the Company as per letter dt. 26-6-1993 with immediate effect, but prior to it, he was not supplied by the Management a copy of the Enquiry Report so as to file an appeal to the Competent Authority. On representation of his union by its letter dt. 20-10-93 to the A.L.C. (C), Dhanbad III, but the failure in the conciliation proceeding before the A.L.C. (C) concerned resulted in the reference for adjudication. The action of the management violative of the principle of natural justice is arbitrary and illegal, amounting to unfair labour practice. As such the Union demanded for reinstatement of the workman with full back wages and other allowance for entire idle period from 26-6-1993 to his resumption of duty, for any other relief, and the cost in favour of the Union.

In this case, the Union did not file any rejoinder to the written statement filed in behalf of the management.

3. On the other hand the pleaded case of the Management with categorical denials is that as per provision of Coal Mines Regulations 1957, the explosive and detonators are issued in the name of Shotfirer, the explosive cartridges are properly counted and kept in a wooden box especially made for the purpose of carrying explosives. The box is locked and handed over to the explosive carrier, and its key is kept with the shotfirer. The explosive carriers are engaged according to the requirement, and each explosive carrier is provided with a separate box to carry the required quantity of explosives in his box under the supervision and control of the shotfirer. After handing over the boxes to the explosive carrier the shotfirer proceeds with the detonators separately and the explosives carrier follow the usual route to avoid pilferage of explosives by miscreants. On 8-12-1992 the workman was deployed in the first shift period from 8 a.m. to 4 p.m. to work as explosive carrier attached to shotfirer Chakkan Mia for carrying explosive from the magazine of Bararee Colliery to the underground mine for the purpose of blasting in the coal seam to win coal from the aforesaid colliery mine. But the workman after receiving the explosive box proceeded on an unhabited route with bushes all around beyond the protection of the Management, making his own errand by lagging behind other explosives carrier on the usual protected route. Out of 36 cartridges kept in his box, the workman supplied only 13 cartridges to the shotfirer for blasting purposes, and made out a case of snatching away 13 cartridges by three miscreants from the box by suddenly overpowering him near a thick bush. The explosives are highly dangerous material which are used in manufacture of bombs by the anti-social elements. Following of the modus operandi by the workman in

proceeding through the lonely jungle possibly collusively facilitated the alleged pilferage of the explosive cartridges by the miscreants for their antisocial activities. So the workman was issued the chargesheet on 09-12-1992 for his misconduct under clauses 26.1.2, 26.1.16 and 26.1.20 of the Certified Standing Order to which he submitted his reply, denying the allegations.

4. At the fair and proper departmental enquiry conducted by Sri Lalan Pandey, the Senior Personnel Officer as the Enquiry Officer as per the rules of natural justice in presence of Mr. M. N. Barnwal, the Safety Officer, as the Management Representative, and the workman and his co-worker R. N. Mandal to their full satisfaction, the Enquiry Officer held him guilty of the charges, and submitted his enquiry report. On examination and consideration of the enquiry report, the enquiry proceeding and all other relevant papers, having satisfied with it, the Management issued the workman the letter of his dismissal. Thus the action of the Management in dismissing the workman from his service was legal, bonafide and justified, so he is not entitled to any relief.

FINDING WITH THE REASONING

5. In this case, on consideration of the evidence of MWI Lalan Pandey, the then Sr. Personnel Officer of Bhulanbaree Colliery as the Enquiry Officer along with all the documents of the entire domestic enquiry (Ext. M.1 to M.11/1) series, this Tribunal as per order dt. 4-1-2006 has held the domestic enquiry as fair, proper and as per the provision of natural justice. So the case came up for hearing argument on merit

6. Mr. D. K. Verma, Ld. Advocate for the Management in his argument has justified the dismissal of the workman in view of serious misconduct. On the appreciation of the materials available on the case record under Sec. 11A of the Industrial Dispute Act, 1947, I find the facts as under :

(i) Though the workman had 30 years experience of his service yet he appears to have committed misconduct of negligence in misdealing with his sensitive duty as the Explosive carrier, by intentionally violating duty the rule of the Mine under clauses 26.1.2, 26.1.15 and 26.1.20 of the Certified Standing Order of the Company. His statement before the Enquiry Officer is different from his reply (Ext.M. 3) to his charge sheet, so it is unjustifiable to the case of pilferage of 13 cartridges by three miscreants.

(ii) As per the Note Sheet dt. 19.5/18.6.1993 (Ext. M.11) the Addl. Chief Mining Engineer, Bararee Colliery had recommended to the Gen. Manager concerned the stoppage of two increments as well as ten days suspension of the workman as

his punishment for his aforesaid misconducts, yet the General Manager, the Disciplinary Authority finding his misconduct very serious, dismissed him from the service.

7. In view of the admitted 30(thirty) years of service of the workman to the Company, his dismissal from his service for his first misconduct amounts to be too harsh and disproportionate to the nature of the proved charges; hence, it is liable to set aside. I think the stoppage of one increment to the workman for his misconduct would be just and proper in order to teach him a lesson. Therefore, it is awarded as such :

The action of the Management of Bararee Colliery of M/s BCCL in dismissing Ram Chandra Koiri, Explosive Carrier from his service is legally unjustified. Therefore, the workman is entitled to reinstatement in his service with full back wages minus one increment for his proved misconduct of negligence etc.

Management is directed to implement the Award within two months from the date of receipt after its publication and notification in Gazette of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

क्र.अ. 2806.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.-2, धनबाद के पंचाट (संदर्भ संख्या 19/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-08-2012 को प्राप्त हुआ था।

[सं. एल-20012/108/2010-आईआर (सीएम-1)]
अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S. O. 2806.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 19/2011) of the Central Government Industrial Tribunal-cum-Labour Court, No.2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of Govindpur Area M/s. BCCL and their workmen, received by the Central Government on 13-08-2012.

[No. L-20012/108/2010-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2 AT DHANBAD

PRESENT : KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 19 of 2011

PARTIES : Employers in relation to the management of E. J. Area, M/s. BCCL and their workman.

APPEARANCES:

On behalf of the Employee/ : Mr. Balmiki Pd.
Workman : Ld. Advocate.

On behalf of the management : None

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 19th June, 2012

ORDER

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their order No. L-20012/108/2010-IR (CM-I), dated the 22-7-2011.

SCHEDULE

“Whether the action of the management of Bhowra (North) Colliery of M/s. BCCL in dismissing Sri Bhuwan Rewani, Ex-Asstt. Loading Clerk from the services of the Company vide order dated 9/15-3-2008 is justified and fair? To what relief the concerned workman is entitled to?”

2. Mr. Balmiki Prasad, the Learned Advocate cum Representative for the workman Bhuwan Rewani, both of them are present, but none appeared for the management nor W.S. Rejoinder filed on its behalf. The aforesaid Representative for the workman submits that the workman does not want to proceed with the case because there has been settlement between both the parties, so the petitioner wants to withdraw the case.

Perused the case record, and the petition dt. 30-04-2012 along with the copy of the Settlement dt. 6-4-2012 as enclosure. I find that the case has been amicably settled between both the parties under their respective signatures on 6-4-2012, as per the terms and conditions noted there under. Since there is no provision of law to permit withdrawal of the case, rather it can be closed on the ground of settlement dt. 6-4-2012. Therefore, it useless to proceed with the case. Hence the case is closed and accordingly, an order of “no dispute” based on the aforesaid settlement as an integral part to it, is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2807.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2, धनबाद के पंचाट (आई डी संख्या 31/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-20012/30/2007-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S. O. 2807.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 31/2007) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 13-8-2012.

[No. L-20012/30/2007-IR (CM-1)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

Reference No. 31 of 2007

Parties : Employers in relation to the management of Bansdeopur Colliery of M/s. BCCL and their workman.

Appearances :

On behalf of the workman : None

On behalf of the Management : Mr. D.K. Verma, Ld. Adv

State : Jharkhand Industry : Coal

Dhanbad, Dated the 23rd July, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/30/2007-IR(CM-I) dated 2-7-2007.

SCHEDULE

“Whether the action of the management of Bansdeopur Colliery of M/s. BCCL in not paying

wages for the period 14-4-2003 to 6-9-2003 to Shri Alluiddin, M/Loader on the ground of not giving work load is justified and legal? If not, to what relief is the concerned workman entitled?”

2. None appeared for the Union/workman nor written statement filed on their behalf. Mr. D.K. Verma, the Ld. Advocate for the Management is present.

After going through the case record, I find the case has been all along pending for appearance as well as for the written statement of the workman, for which earlier notices dtd. 3-12-2007, 11-1-2008, 20-3-2008, 1-12-2010, 1-4-2011 and lastly 6-3-2012 and 24-4-12 were issued to the General Secretary of the Union concerned on the address as noted in the Reference, yet none of the aforesaid Regd. notices returned unserved nor any response by way of appearances or of filing written statement on behalf of the Union/workman effected. The pendency of the case has been abinitio since 30th November, 2008. The conduct of the Union as well as workman Alluiddin, M/Loader in his case related to non payment of his wages for the period 14-4-2003 to 6-9-2003 indicates their disinterestedness in pursuing it.

Under these circumstances of uncertainty, proceeding with the case is mere wastage of time and energy of the Tribunal for nothing. Hence, the case is closed and accordingly an order is passed as non-existent of the Industrial dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2808.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नं 2, धनबाद के पंचाट (आई डी संख्या 68/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-20012/274/2004-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S. O. 2808.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 68/2005) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. CCL and their workmen, received by the Central Government on 13-8-2012

[No. L-20012/274/2004-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD****Present :** Shri Kishori Ram, Presiding OfficerIn the matter of an Industrial Dispute under Section 10(1)
(d) of the I.D. Act., 1947.**Reference No. 68 of 2005****Parties:** Employers in relation to the management of
Rajrappa Project of M/s. CCL and their workmen.**Appearances:**

On behalf of the workman : Mr K. Chakraborty, Ld. Adv.

On behalf of the Management : Mr. D.K. Verma, Ld. Adv.

State : Jharkhand

Industry : Coal

Dhanbad, Dated the 10th July, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/274/2004-IR (CM-I) dtd. 19-7-2005.

SCHEDULE

“Whether the demand of the Jharkhand Colliery

Mazdoor Union from the management of CCL, Rajrappa Project that the 27 workman (as per list) may be promoted to the post of E.P.G.H. is justified? If so, to what relief are the workmen entitled and from what date?”

2. Mr. K. Chakraborty, the Ld. Advocate for the Union/27 workmen as per the correct list enclosed with Ministry of Labour & Employment, Government of India, Letter dtd. 26-5-2008, appeared but no witness for the workmen produced on behalf of the workmen as submitted by the their Ld. Counsel Mr. K. Chakraborty, because they are not coming for it Mr. D.K. Verma, the Ld. Advocate for the Management is present.

Perused the case record, I find that the case has been pending for evidence of the workmen since 27-3-2012, for which ample opportunity were given to the sponsoring union/workmen concerned in their present case under adjudication which is related to their promotion to the post of E.P.G.H. The conduct of the workmen appears to be quite unwilling to proceed with the case.

Under these circumstances, proceeding with the case for infinity is useless rather wastage of time and energy of the Tribunal. Hence the case of the Union/workmen Lali Mahato and 26 others is closed, and accordingly it is passed an order of non-existence of the industrial dispute.

KISHORI RAM, Presiding Officer

रजरप्पा परियोजना में कार्यरत कैटेगरी - 2 कामगार जिन्हें वरीय होते हुए भी ई.पी.जी.एच. के पदोन्नति से वंचित रखा गया।

क्र.सं.	कामगार का नाम	जन्म तिथि	नियुक्ति तिथि	के.-2 तिथि
(1)	(2)	(3)	(4)	(5)
1.	श्री लाली महतो	23-4-1963	11-5-1981	1-9-1986
2.	श्री कोयला महतो	21-6-1956	17-8-1979	1-9-1986
3.	श्री राम चरण महतो “ए”	26-3-1948	3-5-1983	1-9-1986
4.	श्री जुगल महतो “बी”	11-12-1950	13-8-1979	1-7-1988
5.	श्री महेश महतो “सी”	13-12-1966	13-12-1988	1-1-1990
6.	श्री राधों मुंडा	3-3-1971	6-3-1989	6-3-1991
7.	श्री सोहन मांझी	22-9-1961	25-9-1989	6-3-1991
8.	श्री मोहर महतो	7-8-1967	10-8-1989	6-3-1991
9.	श्री सुरेश महतो “बी”	7-10-1966	8-11-1988	6-3-1991
10.	श्री बिहारी मांझी “सी”	18-10-1969	25-10-1989	6-3-1991
11.	श्री दिनेश्वर	5-8-1956	10-8-1989	6-3-1991
12.	श्री कईला महली	9-1-1963	11-1-1988	6-3-1991

(1)	(2)	(3)	(4)	(5)
13.	श्री जलेश्वर महतो "बी"	17-1-1968	23-1-1990	6-3-1991
14.	श्री जतरु महतो	22-9-1969	27-9-1989	2-3-1992
15.	श्री सोभा बड़ाईक	20-3-1967	24-3-1990	2-3-1992
16.	श्री जवाहर लाल	14-1-1962	19-12-1986	2-3-1992
17.	श्री बुद्धदेव उरॉव	12-8-1968	16-8-1988	27-4-1993
18.	श्री भागीरथ राम मांझी	13-3-1969	13-2-1992	27-4-1993
19.	श्री धनेश्वर महतो	14-10-1973	14-10-1991	9-8-1993
20.	श्री एतवा मांझी	4-1-1974	14-1-1992	5-7-1997
21.	श्री फुरकान साह	20-4-1972	21-7-1992	3-4-1998
22.	श्री सोमर सिंह	15-8-1973	2-5-1991	3-4-1998
23.	श्री सोमई मांझी	4-1-1977	2-5-1992	3-4-1998
24.	श्री अनिल पाहन	26-10-1968	22-1-1994	3-4-1998
25.	श्री राम शरण महतो	6-7-1967	5-1-1995	3-4-1998
26.	श्री लक्ष्मण मांझी	31-7-1976	5-8-1991	3-4-1998
27.	श्री शिव मांझी	4-1-1977	6-2-1992	3-4-1998

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2809.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2, धनबाद के पंचाट (आई डी संख्या 20/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-20012/8/2006-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2809.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 20/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of Sijua Area of M/s. BCCL and their workmen, received by the Central Government on 13-8-2012.

[No. L-20012/8/2006-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

Reference No. 20 of 2006

Parties: Employers in relation to the Sijua Area of
M/s. BCCL and their workmen.

Appearances:

On behalf of the workman : None

On behalf of the Management : None

State : Jharkhand Industry : Coal

Dhanbad, Dated 20th July, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947, has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/8/2006-IR(CM-I) dated 1-6-2006.

SCHEDULE

"Whether the demand of the Rashtriya Colliery Mazdoor Sangh from the Management of Tetulmari Colliery under Sijua Area of M/s. BCCL for regularising Sh. Mahi Ram Manjhi, Devi Lal Rajak and Sheo Pd. Bhuia to the post of Clerk Class-II is justified? If so, to what relief are the concerned workmen entitled and from what date?"

2. None appeared either for the workman/union nor for the management nor written statement of the workman filed, despite last chance.

On the perusal of the case record, I find that the sponsoring union for the workmen, namely S/Shri Mahu Ram Manjhi, Devi Lal Rajak and Sheo Pd. Bhuia by filing a petition dt. 27-1-2009 had already submitted for passing No dispute award in this case.

Under these circumstances no longer industrial dispute exists hence no dispute award is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.अ. 2810.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं 2, धनबाद के पंचाट (आई डी संख्या 54/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-20012/86/2002-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2810.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 54/2002) of the Central Government Industrial Tribunal/Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of CCL and their workmen, received by the Central Government on 13-8-2012.

[No. L-20012/86/2002-IR (CM-1)]

AJEET KUMAR, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

Present : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

Reference No. 54 of 2002

Parties : Employers in relation to the Sounda Colliery of M/s. CCL and their workman.

Appearances :

On behalf of the workman	None
On behalf of the Management	Mr. D.K. Verma, Ld. Advocate
State : Jharkhand	Industry : Coal

Dhanbad, dated the 18th July, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/86/2002-IR(CM-I) dated 15-7-2002.

SCHEDULE

"Whether the demand of the Union to change the date of birth recorded in the service records of Sri Mahesh Prasad as 27-1-1958 is proper and justified? If yes, to what relief is the concerned workman entitled?"

2. None appeared for the Union/workman Mahesh Prasad nor any witness on their behalf produced despite three Regd. notices to the Joint Secretary, Rashtriya Koyala Mazdoor Union, Sounda Branch, PO : Sounda, Distt : Hazaribagh, Pincode : 829126 on his address as noted in the Reference. But Mr. D.K. Verma, the Ld. Advocate for the Management is present

Perused the case record. It is quite clear from it that the case has been pending for the evidence of the workman since 4-8-2005, for which several notices on the same address were earlier issued by the Tribunal. The present case relates to an issue of date of birth of the workman. The very conduct of the Union as well as the workman clearly indicates the unwillingness/disinterestedness on their part to proceed with their case. Proceeding with the case under these circumstance is like carrying unnecessary burden. Hence, the case is closed and accordingly, an order is passed as no dispute.

KISHORI RAM, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.अ. 2811.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 113/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/151/2002-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2811.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 113/2003) of the Central Government Industrial Tribunal/Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Hindustan Lalpeth Colliery No. 1 of WCL, and their workmen, received by the Central Government on 13-8-2012.

[No. L-22012/151/2002-IR (CM-II)]

B.M. PATNAIK, Section Officer

ANNEXURE
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NAGPUR

No. CGIT/NGP/113/2003

Progress

Advocates for both the parties are present. Advocate for the petitioner files an application being signed by union representative for closure of the case on the ground that the workman died about 2 months back due to heart attack and his family members and the union do not want to contest the case any further. Copy served on the advocate for the management, who has made endorsement of "no objection" on the application itself. Heard. As the union and the family members of the deceased workman do not want to proceed with the reference further, the application is allowed. Put up later on for orders.

Presiding Officer

Party No. 1 : The SubArea Manager,
Hindustan Lalpeth Colliery
1 of WCL, Post: Lalpeth,
Distt. Chandrapur (MS)

V/s.

Party No. 2 : Shri Mallesh Kamtam,
Secretary, Rashtriya Colliery
Mazdoor Congress, Hinglaj
Bhawani Mandir, Junona
Chowk. P.O. Chandrapur,
Po & Dist. Chandrapur (MS)

AWARD

(Dated: 2nd August, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri A.D. Bagade, for adjudication, as per letter No. L-22012/151/2002-IR (CM-II) dated 8-5-2003, for adjudication with the following schedule:—

"Whether the action of the management of Hindustan Lalpeth Colliery No. 1 of WCL, in terminating the services of Shri A.D. Bagade, Timber Mazdoor vide office order No. WCL/CHA/HLC-1/MGR/PER/1429 dated 28-7-1996 is legal and justified? If not, to what relief is the workman entitled?"

2. On receipt of the reference, parties were noticed to the file their respective statement of claim and written statement, in response to which, the union, "Rashtriya Colliery Mazdoor Congress", ("the union" in short) filed the statement of claim, on behalf of the workman Shri A.D.

Bagade, ("the workman" in short) stating that the termination of the workman is not justified and the workman is entitled for reinstatement in service.

3. The management of WCL, ("Party No. 1" in short) filed the written statement pleading inter-alia that a departmental enquiry was held against the workman and the departmental enquiry was just, fair and proper and the imposition of punishment of termination from service is also legal and proportionate to the charges proved against him and as such, there is no scope of interference.

4. During the pendency of reference i.e. 2-8-2012, the union representative filed the application to close the case on the ground that the workman expired about two months back due to heart attack and the family members of the deceased workman and the union do not want to proceed with the reference and after hearing the party the application was allowed. Therefore, it is necessary to pass a "no dispute" award. Hence, it is ordered:—

ORDER

The reference may be treated as "no dispute" award. The applications filed by the union representative for the workman dated 2-8-2012 is made part of the award.

J. P. CHAND, Presiding Officer

COURT'S COPY

**BEFORE THE PRESIDING OFFICER CENTRAL
GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT NAGPUR**

Reference Case No. CGIT/NGP/113/03

W.C.L. Vs. Their workman
(Case of Sri- A.B. Bagde)

**Application for closing the case as with drawn on
Account of death of workman (Sri A.B. Bagde)**

- (1) That the workman has since expired about three months back due to heart, attack at Chandrapur about a couple of months back.
- (2) That his family members as well as the union do not want to Contest the case any further.
- (3) That in view of the above the common prays to close the case as with drawn.
- (4) The under signed Mallesh Ashalu Kamtam has taken up the case in conceliation and raised the dispute prayer: As above.

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2812.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टिस्को के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण

नं 2, धनबाद के पंचाट (आई डी संख्या 376/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-20012/261/1999-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2812.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. 326/1999) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of TISCO and their workmen, received by the Central Government on 13-8-2012.

[No. L-20012/261/1999-IR (CM-I)]

AJEET KUMAR, Section Officer
ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD**

Present : SHRI KISHORI RAM, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947.

Reference No. 326 of 1999

Parties: Employers in relation to the Tisco under the General Manager (Collieries), TISCO, Jamadoba, Distt. Dhanbad and their workmen

Appearances:

On behalf of the workman : Mr. N.G. Arun,
Rep. of workman
On behalf of the Management : Mr. D.K. Verma,
Ld. Advocate
State : Jharkhand Industry : Coal

Dhanbad, Dated 18th July, 2012

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/261/99-IR(C-I) dated 26-11-99.

SCHEDULE

“Whether the action of the Management of TISCO in frequently changing the job and designation of the workman Sh. Baijnath Manjhi from PR Stone Cutter to Roof Bolter to onsetter/Banksman to Pump Operator, prejudicing his promotional avenues in any of the line under regular cadre scheme is fair, just and proper? If not, what direction are required in the matter.”

2. Mr. N.G. Arun, the union Representative-cum-Advocate for the workman and Mr. D.K. Verma, the Ld.

Advocate for the management are present. The Union Representative submits that it has already been settled to his knowledge. Hence, it may be closed.

From the perusal of the case record, I find that the case has been pending for the evidence of the workman since 17-4-2008, for which several Regd. notices till Last one dt. 25-1-2012 were issued to the Union concerned, but all in vain. At last, the aforesaid Union Representative out of the his knowledge has submitted to close the case, as it has been amicably settled between both the parties. Under these circumstances, no industrial dispute exists now. Hence the case is closed and accordingly order is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2813.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबंध निर्योजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 17/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/146/2005-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S. O. 2813.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. 17/2006) of the Central Government Industrial Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Ambara Colliery of WCL, and their workmen, received by the Central Government on 13-8-2012.

[No. L-22012/146/2005-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/17/2006

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

The Secretary,
M.P.K.K.M. P. (HMS) Union,
PO Junnardeo,
Chhindwara

.....Workman

Versus

The Manager,
Ambara Colliery of WCL,
Kanhana Area, PO Ambara,

Chhindwara

.....Management

AWARD

Passed on this 3rd day of August 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-22012/146/2005-IR (C-II) dated 28-4-2006 has referred the following dispute for adjudication by this tribunal:—

SCHEDULE

“Whether the action of the management of WCL, Pench Area, Distt. Chhindwara in not correcting the date of birth of Shri Jagdish Prasad Chourasia the workman after 30 years of joining his service is legal and justified? If not, to what relief the workman is entitled to?”

2. The case of the Union/workman in short is that the workman Jagdish Pd. Chourasia was initially appointed in the year 1974 and his date of birth by mistake was recorded as 1-7-1946 by the management. Subsequently he was promoted as Electrical Fitter. It is stated that in the year 1987 the management made quarries from all the employees and the workman submitted his relevant school leaving certificate showing his date of birth as 10-8-1951. The workman again submitted an application on 23-11-1987 with further documents for correction of his date of birth. In spite of assurance given no action was taken. The workman again filed representations on 11-9-89 and 23-3-90. It is stated that all his records show that his date of birth is 10-8-1951. It is submitted that the management be directed to correct the date of birth as 10-8-1951 and accordingly salary with all consequential benefits till the date of actual superannuation be paid with costs.
3. The management appeared and filed Written Statement in the case. The case of the management, inter alia, is that the workman was initially appointed at Ambara Colliery on 24-12-1974. His date of birth as recorded was 28 years on his declaration. As such his date of birth was calculated as 1-7-46. He raised the present dispute in the year 2006 that his age is 10-8-1951. Subsequently also Form B register was maintained as per Mines Act and his date of birth was recorded as 1-7-1946. The date of birth was earlier displayed on the notice board in the year 1981 as per guidelines of Implementation Instruction No. 37 (in short I.I. No. 37) and objection was raised within 90 days but he had not filed. Again in the year 1987 the Service Excerpt of every employee was circulated and the same was read to

the workman but the workman did not raise any dispute. The management introduced pension scheme and the workman submitted family particulars in proforma PS-3 and PS-4. The said proformas also disclosed his date of birth as 1-7-1946. The workman has not submitted any document in accordance with I.I. No. 37 & 76 in support of his claim of age. It is stated that there is no case of the workman and he is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication:—
- I. Whether the action of the management in not correcting the date of birth of the workman after 30 years of his service is legal and justified?
- II. To what relief the workman is entitled?

5. Issue No. I

Now the evidence of the workman is to be examined in order to determine the point for consideration. The workman Shri Jagdish Prasad Chourasia initially supported his case in examination-in-chief. He has stated at para-15 that he was initially appointed on 25-12-1974 and he was tenth fail and he possessed educational certificate. He has further stated that he had signed over the Form B register wherein the date of birth was written as 1-7-46. This fact clearly shows that he had educational certificate but had not filed the same and had not raised any objection when he got knowledge that his date of birth was recorded as 1-7-1946. He has further stated that Service excerpt was given to him which is marked as Exhibit M/4. This also shows that in the year 1987 again objection was invited of the age but the workman has not filed any objection or certificate to claim the present dispute. He has again admitted in his evidence that the pension forms were filled up by him which are Exhibit M/1 and M/2. The said forms also show that the date of birth was filled up as 1-7-1947. The learned counsel for the workman submitted that there is correction of the age. It is true that there is correction but initial was done by the workman himself. Thus the evidence of the workman clearly shows that the workman had knowledge of his date of birth from the date of entering into the service and no relevant document was filed by the workman even on asking objection to correct the date of birth, if any.

6. The workman has not certain documents which are admitted by the management. Exhibit W/1 and Exhibit W/2 are the I.I. No. 76. This is the procedure of instruction for review/determination of date of birth of the employees in case of dispute raised by them. Exhibit W/3 is letter dated 13-10-2003 by the Area Personnel Manager to the workman. This document clearly shows that the dispute of age was raised in 2003 and the management informed him that the Form B shows his date of birth as 1-7-1946. Secondly the service Excerpts was delivered to the workman indicating the age as 1-7-1946 but the workman did not raise any dispute of age and thirdly the documents filed by the workman was issued after coming in the service which appears to be against I. I. No. 76. Exhibit W/4 is the failure report of the Asstt. Labour Commissioner (C), Chhindwara to the Ministry. The workman has also not proved any of his educational certificate to support his case. Thus the documentary evidence also shows that he had knowledge of his age as recorded in the record of the management but he had not raised dispute with sufficient documentary evidence.

7. On the other hand, the management has also adduced oral and documentary evidence in the case. The management witness Shri Chandra Pratap Tiwari is working as Mines Manager of Ambara Colliery, Kanhan Area. He has supported the case of the management. He has stated that at the time of initial appointment of the workman, his date of birth was declared as 28 years. He has proved the documents. His evidence also establishes that the date of birth of the workman was recorded as 1-7-1946 from the very beginning of his service.

8. The management has filed documentary evidence which are admitted by the workman. Exhibit M/1 and Exhibit M/2 are Form PS-3 and PS-4 under pension scheme which are filed up by the workman himself. These forms show that the workman has written by date of birth as 1-7-1947. Exhibit M/3 is the form B register. This is filed to show that at the time of initial appointment, the workman declared his age as 28 years on the date of appointment. This shows that in this way, his age was 1-7-1946. Exhibit M/4 is the Service Excerpts. The workman has admitted this document in his evidence. This is filed to show that the management served Service Excerpts in the

year 1987 inviting objection with respect to age etc. but no objection was raised. Thus it is clear that the record of the management clearly shows that the date of birth of the workman was recorded as 1-7-1946. There is no sufficient evidence to show that it was wrongly noted in the record. This shows that the correct date of birth of the workman is 1-7-1946. This issue is decided against the workman and in favour of the management.

9. Issue No. II

On the basis of the discussion made above, I find that the management is justified in not correcting the date of birth after about 30 years of his service. It is clear that the workman is not entitled to any relief. The reference is accordingly answered.

10. In the result, the award is passed without any order to costs.

11. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2814.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नागपुर के पंचाट (संदर्भ संख्या 21/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/7/2009-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2814.—In pursuance of Section 17 of the Industrial Disputes Act, 1947, (14 of 1947) the Central Government hereby publishes the Award (Ref. No. 21/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Ballarpur Colliery 3/4 Pits of WCL, and their workmen, received by the Central Government on 13-8-2012.

[No. L-22012/7/2009-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NAGPUR

No. CGIT/NGP/21/2009

Advocate for the parties are present. Advocate for petitioner receives the copy of the application alongwith copy of and the present the writ petition no. 3890/2009.

Call on 2-8-2012 for filing say by the petitioner and hearby as the petition.

Advocates for both the parties are present. Advocate for the petitioner files reply to the petition filed by the management dated 17-11-2011, for disposal of the reference in view of the orders passed by the Hon'ble Court in Writ Petition No. 3890 of 2009. Copy served on the other side. Heard. The advocate for the petitioner in the reply has mentioned that as the Hon'ble High Court have been pleased to decide the matter of compassionate appointment holding that the petitioner, Puranchand is not entitled for such employment, the case may be treated as withdrawn. Hence, the application filed by the management is allowed. Put up later on for orders.

Party No. 1 : The Sub Area Manager,
Ballarpur Colliery
Pitsof WCL, Ballarpur
Area, Post: Ballarpur,
Chandrapur (MS)

V/s.

Party No. 2 : Workman represented by
General Secretary, Koyla
Shramik Sabha (HMS),
Ballarpur Area, Lokmanya
Tilak Ward, Post: Ballarpur,
Chandrapur (MS)-442701

AWARD

(Dated: the 2nd August, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their dependent son of the deceased workman, Late Rambharan Yadev, for adjudication, as per letter No. L- 22012/7/2009-IR (CM-II) dated 12-6-2009, for adjudication with the following schedule :—

"Whether the action of the management in denying compassionate appointment to Shri Puranchand, the dependant son of Late Shri Rambharan Yadev, the Ex-workman is legal and justified? To what relief is the claimant entitled for?"

2. On receipt of the reference, parties were noticed to the file their respective statement of claim and written statement, in response to which, the union, "Koyla Shramik Sabha (HMS)", ("the union" in short) filed the statement of claim, on behalf of the claimant Shri Puranchand, ("the claimant" in short) stating that Rambharan Yadav, the deceased father of the claimant was working as a Trammer in 3/4 Pits of Ballarpur Colliery and while working underground mine, he developed sudden acute problem and died on 21-2-1994 during the course of his employment and there are provisions in the NCWAs for giving

employment to a dependent of the workman, who dies in harness and the claimant is a dependent of Late Rambharan Yadev, being his son and he approached the management to give him employment, but management did not consider his case and as such, the claimant is entitled for compassionate appointment.

3. The Party No. 1 filed the written statement pleading inter-alia that Rambharan died on 21-2-1994 and at that time, the claimant was a minor, as his age was 14 years at that time, his date of birth being 6-7-1979 and as the claimant was a minor, he was not suitable for employment in the services and as such, his case could not be considered for appointment on compassionate ground and the application for employment by the claimant was made in the year 2002, after a period of more than 8 years of the death of his father, but still then, the management considered his case in the light of the provisions of NCWA pertaining to appointment on compassionate ground and he being a minor was not falling within the agreed terms of agreement and as such, his claim was not accepted and the claimant is not entitled to any relief.

4. During the pendency of reference i.e. on 17-11-2011, the learned advocate for the Party No. 1 filed an application for disposal of the reference in view of the orders passed by the Hon'ble High Court, Nagpur Bench on 17-3-2011 in Writ Petition No. 3890 of 2009, rejecting the claim of the claimant for compassionate appointment.

5. The learned advocate for the claimant filed reply to the above mentioned application stating that as the Hon'ble High Court have already decided the matter of compassionate appointment of the claimant, this Tribunal cannot re-consider the same and the case be treated as closed/withdrawn.

In view of the say filed by the learned advocate for the claimant, the application filed by the Party No. 1 was allowed.

6. Perused the orders passed by the Hon'ble High Court in Writ Petition No. 3890 of 2009 dated 17-3-2011, which was filed by the present claimant and 2 others for compassionate appointment. The Hon'ble High Court dismissed the Writ Petition holding that the claimant is not entitled for compassionate appointment.

In view of the orders passed by the Hon'ble High Court as mentioned above, the reference is not maintainable being hit by the principles of res-judicata and the claimant is not entitled to any relief. Hence, it is ordered:—

ORDER

The reference is not maintainable and the claimant is not entitled to any relief

J. P. CHAND, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2815.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 3/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/61/2001-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

—New Delhi, the 13th August, 2012

S.O. 2815.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 3/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the management of Hindustan Lalpeth U/G Sub Area of WCL, and their workmen, received by the Central Government on 13-8-2012.

[No. L-22012/61/2001-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/3/2002

Advocate for both the parties are present. Advocate for the petitioner files an application being signed by union representative for closure of the case on the ground that the workman is not interested to pursue the case. Copy of the application has been served on the advocate for the management. Heard. As the workman doesn't want to proceed with the case as per the application submitted by the union representative, the application is allowed. Put up later on for orders.

Presiding Officer

Party No. 1 : The Sub Area Manager,
Hindustan Lalpeth U/G
Sub Area of WCL,
Post : Lalpeth
Distt. Chandrapur (MS)

V/s.

Party No. 2 : Sh. Chandrakant Khandre,
General Secretary,
Koyla Shramik Sabha (HMS)
C/o C.G Khandre Near
Mahakali Mandir,
PO : Chandrapur (MS)

AWARD

(Dated the 1st August, 2012)

In exercise of the powers conferred by clause (d) of

sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Udayraj Yadav, for adjudication, as per letter No. L-22012/61/2001-IR (CM-II) dated 19-12-2001, to CGIT-cum-Labour Court, Jabalpur for adjudication with the following schedule:—

"Whether the action of the management of Nandgaon Incline of Hindustan Lalpeth U/G Sub-Area of WCL, Chandrapur in dismissing Shri Udayraj Yadav, Loader, from services vide order No. WCL/CHA/HLUGSA/PER/51 dated 5-1-1994 is legal and justified? If not, to what relief he is entitled?"

2. On receipt of the reference, parties were noticed to the file their respective statement of claim and written statement, in response to which, the union, "Koyla Shramik Sabha (HMS)", ("the union" in short) filed the statement of claim, on behalf of the workman Shri Udayraj Yadav, ("the workman" in short) stating that the dismissal of the workman is not justified and the workman is entitled for reinstatement in service.

3. The management of WCL, ("Party No. 1" in short) filed the written statement pleading inter alia that a departmental enquiry was held against the workman and the departmental enquiry was just, fair and proper and the imposition of punishment of dismissal from service is also legal and proportionate to the charges proved against him and as such, there is no scope of interference.

4. During the pendency of reference i.e. 1-8-2012 the union representative filed the application to close the case on the ground that the workman is not interested to pursue the reference and the application was allowed. Hence, it is necessary to pass a "no dispute" award. Hence, it is ordered:—

ORDER

The reference may be treated as "no dispute" award. The applications filed by the union representative for the workman dated 1-8-2012 is made part of the award.

J. P. CHAND, Presiding Officer

ANNEXURE

BEFORE THE HONOURABLE PRESIDING OFFICER CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NAGPUR

Reference Case No. CGIT/NGP/3/2002

Sub Area Manager, Hindustan Lalpeth Sub Area W.C.L.
Chandrapur

—Party No. 1

V/s

Their workman (Case of Sri Udayraj Yadav)

—Party No. 2

**Humble Application of Workman/Union for
withdrawing the case**

(1) It is humbly submitted that the only son of the workman Sri Uday Raj Yadava had died in an road accident at Chandrapur. Which has resulted in deep depression and an mental health. This was mentioned before the Honourable Tribunal.

(2) That the daughter in law had also been has house abandoning the workman.

(3) That the workman has been ailing and the information and certificate to this effect is also an record

(4) That inspite of repeated information given to him ti me to time he is not responding and attending counsel.

(5) That since the workman himself is not interested to pursue his case hence has no alternative but to close the case as withdrawn.

Prayer: prayed to close the case as withdrawn.

Nagpur

Dt. 26-7-2012

Sd/-

Filed on 1-8-2012

Sd/-

1-8-2012

CFA

Sd/-

(CHANDRAKANT KHANDRE)

General Secretary
Koyla Shramik Sabha
H.M. S. Chandrapur

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2816.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयर इण्डिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं 1, मुम्बई के पंचाट (आई डी संख्या CGIT-1/57 of 2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-11012/61/2003 आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

—New Delhi, the 13th August, 2012

S.O. 2816.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No. CGIT-1/57 of 2004) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Mumbai as shown in the Annexure, in the Industrial Dispute between the management of Air India and their workmen, received by the Central Government on 13-8-2012.

[No. L-11012/61/2003-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1, MUMBAI**

Present. JUSTICE G.S. SAKRAJ, Presiding Officer

Reference No. CGIT-1/57 of 2004

Parties Employers in relation to the management of Air India Ltd.

And

Then workman (P.P. Thakur)

Appearances:

For the Management : Shri Kumar Vaidyanathan,
Adv.

For the workman : Absent

State : Maharashtra

Mumbai, dated the 6th day of July, 2012

AWARD (PART-I)

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference given in the schedule are as follows:

Whether the action of the management of Air India Ltd., Mumbai in dismissing the services of Mr. Praveen P. Thakur loader with effect from 18-1-2002 is legal and justified? If not, to what relief is the workman entitled?

2. According to the statement of claim filed by the workman he was appointed as loader in the Ground Service Department on 12-4-1993 and thereafter he was confirmed on 1-10-1993. He did not commit any act of misconduct as alleged by the first party in the chargesheet dtd. 2-5-2000. The Enquiry Officer did not give him any fair and proper opportunity to defend his case and thus the Enquiry Officer violated the principles of natural justice. The chargesheet was vague, false, fabricated and concocted. The Enquiry Officer did not explain the procedure of enquiry to him. The first party withheld a material witness R.K. Shukla, Dy. General Manager. The first party failed to provide him the list of witnesses and relevant documents. The Enquiry was conducted in English but the workman did not know English. There is contradiction between allegation made in the chargesheet and the statement of the first party witness. The findings of the Enquiry Officer are perverse. The punishment is disproportionate. The second party has, therefore, prayed that he be reinstated with continuity of service and full back wages.

3. According to the written statement the second party workman absented unauthorisedly for 136 days between July 1998 and October 1999 which amounted to

gross misconduct on the party of the second party workman. A domestic enquiry was instituted to enquire into the charge as mentioned in the chargesheet dtd. 2-5-2000. The enquiry was conducted in accordance with the principles of natural justice. The findings given by the Enquiry Officer are based on evidence available on the record. The second party was warned for remaining absent unauthorisedly for 48 days during the period from April 1994 to March 1995. The second party was then issued a chargesheet dtd. 15-7-1996 for his unauthorised absence of not less than 65 days between January 1995 and December 1995. He was given an opportunity to improve his conduct and behaviour and accordingly a lenient punishment of withholding three annual increments without restoration was awarded to him. The second party instead of improving his attendance and showing concern and commitment towards his work and duties continued his practice of remaining absent unauthorisedly. The workman was again issued chargesheet dtd. 17-9-1997 for the unauthorised absence of 57½ days during the period from January 1996 to December 1996. The management however gave a minor punishment of withholding one annual increment. The second party was again issued a chargesheet dtd. 5-1-1999 for his unauthorised absence of 86 days in the period from July 1997 to June 1998. The second party was given an opportunity to improve and was given a minor punishment of reduction to the lower scale by two stage. The minor punishments were ignored by the second party. The workman continued to commit gross misconduct. The punishment is not disproportionate. The first party has, therefore, prayed that the reference be rejected.

4. The second party has filed rejoinder wherein he has reiterated his stand taken in the statement of claim.

5. The second party filed his affidavit on 25-7-2007. The second party then absented. A notice was issued to the second party as per the order sheet dtd. 2-3-2011. The second party did not turn up in spite of service of notice on the next date i.e. 21-4-2011 and, therefore his cross examination was closed. Since the first party has not availed the opportunity of cross examination of the second party, therefore, the affidavit of the second party cannot be read in evidence.

6. The first party has filed affidavit of D.P. Nerukar.

7. Heard learned counsel for the first party.

8. Here we have to see whether the enquiry held against the second party is not fair and proper and whether the findings given by the Enquiry Officer are perverse. The burden is on the second party workman to prove that the enquiry is not fair and proper and that the findings of the Enquiry Officer are perverse. The affidavit of the workman cannot be read in evidence as stated earlier and thus the workman has not led any evidence to discharge the burden cast upon him. On the other hand the first

party has filed the affidavit of the Enquiry Officer D.P. Nerukar which clearly shows that there is no violation of principles of natural justice and that the findings are not perverse.

9. On the basis of the above discussion I have come to the conclusion that the enquiry conducted against the second party workman was fair and proper and the findings of the Enquiry Officer are not perverse.

10. Award Part I is passed accordingly.

11. It is now to be decided whether the punishment awarded to the second party workman is or is not disproportionate to his misconduct for which the case be listed for hearing on 10-7-2012.

JUSTICE G. S. SARRAF, Presiding Officer
**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 1**

MUMBAI

Present: JUSTICE G.S. SARRAF, Presiding Officer

Reference No. CGIT-1/57 of 2004

Parties: Employers in relation to the management of
Air India Ltd.

And

Their workman (P.P. Thakur)

Appearances:

For the Management : Absent

For the workman : Absent

State : Maharashtra

Mumbai, dated the 10th day of July, 2012

AWARD PART-II

1. This is a reference made by the Central Government in exercise of its powers under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947. The terms of reference given in the schedule are as follows:

“Whether the action of the management of Air India Ltd., Mumbai in dismissing the services of Mr. Praveen P. Thakur loader with effect from 18-1-2002 is legal and justified? If not, to what relief is the workman entitled?”

2. It is not necessary to narrate the facts here as the facts in detail have been stated in Award Part-I passed on 6-7-2012.

3. It has been held in the Award Part-I that the enquiry conducted against the second party workman was fair and proper and that the findings of the Enquiry Officer are not perverse.

4. It is to be seen now that whether the punishment of removal from service awarded to the second party workman is or is not disproportionate to the misconduct.

5. The second party workman has been found guilty of unauthorised absence for 136 days between July 1998 and October 1999. It is to be noted that he was also found guilty of unauthorised absence on four earlier occasions.

6. The conduct of remaining absent for long periods without obtaining leave is a gross misconduct. The punishment must be commensurate with the gravity of the misconduct charged. In the facts and circumstances of the case I do not think that the punishment awarded to the workman is shockingly disproportionate to the charge found proved against him. There is no place for any generosity or misplaced sympathy in this case so as to warrant interference with the quantum of punishment.

7. In view of the above discussion the second party workman is not entitled to any relief.

Award Part-II is passed accordingly.

JUSTICE G. S. SARRAF, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2817.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 21/2003) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/130/2002-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2817.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of Western Coalfields Limited, and their workmen, received by the Central Government on 13-8-2012.

[No. L-22012/130/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,
CGIT-CUM-LABOUR COURT, NAGPUR**

Case No. CGIT/NGP/21/2003

Date: 2-8-2012

Party No.1

The Chief General Manager,
Western Coalfields Limited, Jaripatka,
Nagpur Area, Nagpur,
Distt. Nagpur.

Versus

Party No. 2

The General Secretary,
Hind Koyala Kamgar Sena,
Sangh Building, Opp. Mahal,
Nagpur-440002.

AWARD

(Dated: 2nd August, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of WCL and their workman, Shri Sharad Manohar Watkar, for adjudication, as per letter No.L-22012/130/2002-IR (CM-II) dated 12-12-2002, with the following schedule:—

"Whether the action of the management of the Western Coalfields Limited, Jaripatka, Nagpur in terminating the services of Shri Sharad Manohar Watkar, General Mazdoor Cat-I w.e.f. 13-1-1999 vide their letter No. WCL/CGM/NGP/C5/LO/37 dated 5/6-1-1999 is legal & justified? If not, to what relief is the said workman entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Sharad Watkar, ("the workman" in short), filed the statement of claim and the management of WCL, ("Party No. 1" in short) filed its written statement.

The case of the workman as presented in the statement of claim is that he was appointed as a General Mazdoor cat.-I in Saoner Mine no.2 on 15-10-1997 and continued to work till 13-1-1999 and during the entire period of his service, there was neither any complaint nor any warning, charge sheet or show cause was issued against him and his service record was clean and unblemished and his appointment by party no. 1 was as a land oustee and 1.06 hectares (2.63 acres) of irrigated land of survey khasra no. 167/2 of mouza Ghat Rohana, which was owned and possessed by his father was acquired for Gondagaon Open Caste Project in the year 1994-95 and in lieu of that he was given the employment vide appointment letter no. 3886 dated 15-10-1997, as per rules and he successfully completed the probation period of six months and became a permanent worker and he also completed 240 days of service in the underground mine, during the preceding 12 months of 13-1-1999" which was more than sufficient for regularisation of his services, but all of a sudden, his services were terminated by party no. 1 vide letter no. 37 dated 5/6-1-1999 stating that, "On scrutiny of the land records, it is observed that the said land is non-irrigated land and the same is less than the norms required for the purpose of employment," and before termination of his services, no

notice of show cause was issued and he was not given any chance of hearing and he was not paid one month's salary in lieu of notice and there was violation of Sections 25-F and 25-G of the Act and so also the 'provisions' of natural justice and the order of termination is arbitrary, malafide and illegal. The further case of the workman is that necessary land records had been submitted in support of the fact that the land in question was irrigated land and the land records were thoroughly scrutinized by the different authorities of party no. 1 and only thereafter, he was given the employment and for providing him employment, charge sheet no. 1172 dated 13-2-1999 had been issued against Shri U.R. Bagde, the Personal Manager, Chandrapur Area and in his explanation, Shri Bagade had clearly mentioned that the land acquired from his father (workman's father) was not less than the norms and the same was irrigated land and under similar land conditions in adjacent area of Khasra no. 167/2, other land oustees, such as Devchand J. Channikar, Gajanan C. Chhanikar, Manohar M. Chhanikar and son of Sukhdeo G. Chhanikar have been given employment and it is very clear that party no. 1 violates their own norms and rules as per their own convenience and self interest.

The workman has prayed to quash and set aside the order of termination of service dated 5/6-1-1999 and to reinstate him in service with continuity and full back wages.

3. The party no. 1 in their written statement has pleaded inter-alia that the workman is the legal heir of Shri Manohar R. Watkar, the land owner of 2.61 acres of agricultural land of Khasra no. 167/2, which came to be acquired and the workman in order to get employment, made a false statement that the land was irrigated land and on the basis of such statement, the employment was offered to the workman and thereafter, the collector-cum-special land acquisition officer made enquiry as per law and declared the land not to be irrigated land and it was found that the workman had suppressed the material facts to get employment and employment was obtained by the workman by fraud and can be treated as no employment in the eyes of law and the termination dated 8-1-1999 is as per law and there is no breach of any of the terms and the workman is not entitled for any relief.

4. It is necessary to mention here that though the workman filed his evidence on affidavit in support of his claim, he did not appear for his cross-examination, in spite of giving him several opportunities for the same and at last, as per order dated 22-11-2010, the evidence of the workman was expunged and evidence from his side was closed.

The evidence of witness, S. Dasgupta for the management filed on affidavit remained unchallenged, as none appeared on behalf of the workman to cross-examine him.

As the workman did not appear in the case to contest the same, as per order dated 20-6-2012 he was set exparte.

5. It is well settled that if a party challenges the legality of the an order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking the jurisdiction of the court must fail. If the workman fail to appear or to file written statement or to produce evidence, the dispute referred by the Government cannot be answered in his favour and he could not be entitled to any relief.

Applying the above settled principles to the present case in hand it is found that, the workman has failed to produce any evidence in support of his claim the order of termination of his services is illegal and as such, the reference cannot be answered in his favour and he is not entitled to any relief. Hence, it is ordered :-

ORDER

The action of the management of the Western Coalfields Limited, Jaripatka, Nagpur in terminating the services of Shri Sharad Manohar Watkar, General Mazdoor Cat-I w.e.f. 13-1-1999 vide their letter no. WCL/CGM/NGP/C5/LO/37 dated 5/6-1-1999 is legal & justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2818.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 140/02) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/200/2002-आई आर (सीएम-II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2818.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 140/02) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of South Eastern Coalfields Limited, and their workmen, received by the Central Government on 13-8-2012.

[No. L-22012/200/2002-IR (CM-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, JABALPUR

NO. CGIT/LC/R/140/02

PRESIDING OFFICER : SHRI MOHD. SHAKIR HASAN

The Secretary,

M.P.Koyla Mazdoor Sabha (HMS),

PO Katkona Colliery,

Distt. Korea,

Korea Chhattisgarh

... Workman

Versus

The Sub Area Manager,
South Eastern Coalfields Limited,
Katkona sub Area,
PO Baikuntpur,
Distt. Korea Chhattisgarh.

...Management

AWARD

Passed on this 23rd day of July 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/200/2002-IR(CM-II) dated 3-10-2002 has referred the following dispute for adjudication by this tribunal:—

“ Whether the action of the Sub Area Manager, Katkona Colliery of SECL, Baikunthpur Area of NECL in terminating the services of Shri K.S.R Reddy, S/o Shri Appa Reddy, Welder w.e.f. 2/3-6-2000 is legal and justified ? If not to what relief is the workman entitled ?”

2. The case of the Union/workman, in short, is that the management passed an order of dismissal dated 2/3-6-2000 without holding departmental enquiry arbitrarily and illegally. It is stated that no opportunity neither a showcause was asked from the workman Shri K. S.R.Reddy in violation of the principles of natural justice. The order of dismissal was simply based on the information given by the Jail Superintendent who had informed that the workman was convicted for offences punishable under Section 363 and 366 of the Indian Penal Code and was sentenced to rigorous imprisonment for one year and a fine of Rs. 500. It is stated that the management had simply relied the letter of the jail Superintendent and had not considered the judgement of the criminal court leading to the circumstances of the conviction. It is stated that the charges were amount to misconduct under the standing order clause 26.8 and 26.5 and therefore before punishing the showcause notice was required to be asked. The offence did not involve moral turpitude. Under the circumstances, the punishment awarded is disproportionate to the offence alleged to have been committed. It is submitted that the order of dismissal dated 2/3-6-2003 be set aside and the workman be reinstated with full back wages.

3. The management appeared and filed Written Statement in the reference case. The case of the management, interalia, is that the workman was working as a Welder at Katkona Colliery. The workman was issued with charge sheet dated 10-3-04, under clause 26.24 and 26.30 of the Standing Orders for long unauthorized absence from duty without any sanctioned leave through registered post but the same was returned with endorsement that the person concerned is not traceable. The management came to know that the workman was in jail under Section 363 and 366 of the I.P.C. The information was sought from the Jail superintendent, Ambikapur, Surguja. He informed the management vide letter dated 12-5-2000 that the workman

was convicted under Section 363 and 366 of the I.P.C in S.T.No. 59/86 by the Sessions Court and was confirmed by the Hon'ble High Court in CHA No. 158/88 and was sentenced to one year rigorous imprisonment and a fine of Rs. 500. In default of payment of fine, he had to further undergo imprisonment for three months. It was not possible to hold enquiry on the chargesheet issued by the management. Since the workman was convicted by the Competent Court, the offence committed by the workman was amount to moral turpitude under clause 26.8 and 28.5 of the Certified Standing Orders. There was no need to conduct departmental enquiry when he was held guilty, of the charges in the criminal proceedings by the Competent Court and there is no violation of the principles of natural justice. It is stated that he was dismissed on the approval by the Competent Authority. The management had taken action under clause 28.5 of the Certified Standing Orders. It is stated that in view of the gravity of the offence, the punishment passed by the management is just and proper. It is submitted that the workman is not entitled to any relief.

4. On the basis of the pleadings of both the parties, the following issues are settled for adjudication-

I. Whether the action of the management in terminating the services of Shri K.S.Reddy w.e.f. 2/3-6-2000 is legal and proper ?

II. To what relief the workman is entitled ?

5. Before discussing the issues, it is proper to see that as to what are the admitted facts of the parties. It is stated as under -

1. The workman was working as a Welder at Katkona Colliery.

2. He became absent from duty without any information

3. He was convicted by the Sessions court under Section 363 and 366 of the I.P.C and was confirmed by the Hon'ble High Court and was sentenced to undergo rigorous imprisonment for one year and a fine of Rs. 500. In default of payment of fine he was further sentenced to undergo imprisonment for three years.

4. No chargesheet or showcause was issued to the workman for the charges of misconduct under clause 26.8 and 28.5 of the certified standing orders by the management.

5. He was dismissed from services vide order dated 2/3-6-2000 for committing misconduct under clause 26.8 and 26.5 of the Certified Standing Orders by the Competent Authority without holding any enquiry.

6. Issue No. I

Now the important point for consideration is as to whether the departmental enquiry was essential or not or even showcause should be issued before passing the order of dismissal by the management or not. The workman

Shri K.S.Reddy is examined in the case. He has stated the admitted facts that no departmental enquiry was conducted and no explanation was called for before dismissing him from services. He has also admitted that he was convicted under Section 363 and 366 of the IPC by the Addl. Sessions Judge and the sentence was reduced by the Hon'ble High Court. He has filed the order dated 2/3-6-2000 of dismissal which is admitted by the management and is marked as Exhibit W/1. His evidence clearly shows that the only point raised by him that no enquiry was conducted nor any showcause was asked and there is violation of natural justice.

7. Now the evidence of the management and the clauses of the certified standing orders are to be examined as to whether any enquiry is required to be held or any showcause is required to be asked in case where the workman was convicted in criminal proceeding by the Competent Court. Clause 26 of the Certified Standing Orders deal with act of misconduct. It is not a procedure as to how the misconduct is to be proved against the workman and what are the requirement to prove misconduct. Clause 26.5 is willful neglect of work and clause 26.8 is conviction in any court of law for any criminal offence involving moral turpitude. This clearly shows that these two clauses are the act of misconduct. It is an admitted fact that the workman was convicted under Section 363 and 366 of the IPC and was accordingly absent without any information. This was already proved in the criminal proceeding and was confirmed by the Hon'ble High Court. The management had no right to review the findings of the competent court as a revisional or appellate authority. Thus it is a proved fact that the misconduct was committed under the aforesaid clause and the offence under Section 363 and 366 I.P.C was involving moral turpitude and was a moral and serious social evil.

8. Procedure of imposition of penalties is dealt in clause 28 of the certified standing order. The clause 28.5 of the certified standing order is reproduced as under :-

"If after enquiry or conclusion of the criminal proceedings, a workman is held guilty of the charges alleged against him or some other charges brought in the course of the enquiry or is convicted in the criminal proceedings and is consequently discharged or dismissed, he shall not be entitled to any remuneration for such period other than the subsistence allowance already paid to him. If a penalty other than dismissal discharge or removal is imposed on him or he is exonerated of charges against him or he is not convicted in the criminal proceedings, he shall be paid the difference of the subsistence allowance already paid to him and the wages which he would have got if he had not been suspended except in case where he is suspended not exceeding ten days, as a measure of punishment."

It is implicit clear from the clause 28.5 of the Certified Standing Orders that on conclusion of the criminal proceedings, if the workman is held guilty of the charges and is convicted in the said proceeding, the management in consequence is entitled to discharge or dismiss the workman from services. Moreover the workman shall not be entitled to any remuneration for such period other than the subsistence allowance already paid to him. Thus in this particular case, I find that it is an admitted fact that the criminal proceeding was finally concluded by the Hon'ble High Court and was held guilty and was convicted for the offences involving moral turpitude. The management cannot review such findings and decision of the Hon'ble High Court. Therefore the action of the management appears to be justified and no enquiry or showcause is required for passing an order of punishment.

9. The management has also adduced oral and documentary evidence in the case. The management witness Smt. Mamta Toppo is working as Sr. Personnel Officer in Baikunthpur Area. She has supported the case of the management. She has stated that the workman was dismissed on the basis of standing orders. She has further stated that he was terminated on the basis of sentences in criminal case and for that no notice is required for dismissal. There is nothing in her evidence to disbelieve this witness. Her evidence supports that the workman was dismissed on the final conclusion of the criminal proceedings in which he was held guilty and was convicted by the Competent Court.

10. The management has filed documents in the case which are admitted by the workman. Exhibit M/1 is the letter dated 12-5-2000 of the Jail superintendent. This is filed to show that the management came to know conclusively from this letter that the workman was convicted and sentenced under Section 363 and 366 of the IPC involving moral turpitude. Thereafter the dismissal order was passed by the Competent Authority. Exhibit M/2 is the charge sheet dated 10-3-04 issued against the workman for unauthorized absence without sanctioned leave. This is admittedly finally not concluded by the management. Exhibit M/3 are postal receipts whereby the chargesheet was sent to the workman. Exhibit M/4 is the dismissal order dated 2/3-6-2000. The workman has also filed this order which is Exhibit W/1. This is filed to show that the workman was dismissed on the charges of clause 26.5 and 26.8 proved in criminal proceedings. This shows that he was not dismissed on the basis of chargesheet dated 10-3-04 issued by the management. Exhibit M/5 is the letter dated 27/28-9-2000 of Sub Area Manager, Katkora to Deputy Chief Personnel Manager, Baikunthpur informing about the dismissal of the workman. Exhibit M/6 is the reply to ALC(C) Shahdol in conciliation proceeding. Exhibit M/7 is the judgment dated 26-2-99 passed by the Hon'ble High Court in Cr. Appeal No. 158/1988 whereby the Hon'ble Court upheld the conviction and reduced the sentence of

the workman. Exhibit M/8 is the noting of the Personnel Manager, Katkona informing regarding conviction of the workman and sought instruction for taking action. Exhibit M/9 is the instruction given by Dy. Chief personnel Manager, Baikunthpur for taking action under clause 28.5 of the Certified Standing Orders to dismiss the workman on conclusion of criminal proceeding. This clearly shows that the workman was dismissed with the procedure of clause 28.5 of the Certified Standing Orders. Thus from the discussion made above, it is clear that the management is legal and justified in terminating the workman from services. This issue is decided against the workman and in favour of the management.

11. Issue no. II

The learned counsel for the workman raised that the punishment is disproportionate to the charges committed by him. It is clear that the workman is convicted for kidnapping minor female child from lawful guardianship and to seduce illicit relationship. It appears to be moral turpitude of serious nature. I find that he does not deserve any lenient punishment and I do not want to interfere in the order of punishment. I find that the workman is not entitled to any relief. The reference is, accordingly, answered.

12. In the result, the award is passed without any order to costs.

13. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 13 अगस्त, 2012

का.अ. 2819.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन एयरलाइन्स लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.1, नई दिल्ली के पंचाट (आई डी संख्या 26/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-11012/6/2003-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2819.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 26/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Indian Airlines Ltd. and their workmen, received by the Central Government on 13-8-2012.

[No. L-11012/6/2003-IR (CM-D)]

AJEET KUMAR, Section Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, KARKARDOOMA COURTS COMPLEX, DELHI,**

I. D. No. 26/2005

The President,
Delhi Offices And Establishment Employees Union,
3, V. P. House, Rafi Marg,
New Delhi-110001.

.... Workmen

Versus

The Chairman,
Indian Airlines Ltd.,
IGI Airport Terminal I B,
New Delhi.

..... Management

AWARD

In the year 1988-89 erstwhile Indian Airlines Ltd., (in short the Airlines) issued notification to fill certain vacancies on regular basis in the categories of Helper (Engineering), Helper (Stores) and Helper (Commercial) by inviting applications for amongst public at large. Requisitions were also sent to employment exchanges under the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. Applications were called from such persons who had worked with the Airlines on casual/temporary basis for a minimum of 90 days during the period of 12 completed months in last three years. On receipt of the applications, selection process was undertaken. Applicants were interviewed and those who were found fit were empanelled, according to merit. Panel of over 200 candidates was approved by the competent authority on 20-11-1990. Empanelled candidates were informed that their appointment was subject to regular vacancies. Candidates only up to serial No. 88 of the panel could be offered regular appointment in order of merit against regular vacancies. Panel lapsed on 15-7-1994 and no further appointment on regular basis was made out of the said panel.

2. A group of casual workers, who had been empanelled, had filed Writ Petition (C) being No. 4113 of 1994 before High Court of Delhi seeking various reliefs including relief of regularization in service. On 7-12-1995, relying on the decision in Piara Singh [1992 (4) SCC 118] the High Court passed interim order directing the Airlines to prepare a panel and to engage casual labour within the said panel as per their exigencies. For sake of convenience the order passed by the High Court is reproduced thus:-

“CM-6235/1995

"Guide lines for dealing with casual workers have already been elaborately given by the Supreme Court in well known case of "Piara Singh" to some extent modified by certain guidelines given in the Horticulture case. We have gone through the policy of the respondents placed on record. We make it clear that there cannot be fixed period for existing a particular panel of casual workers because the question of panel replacing would only arise in respect of regular vacancies for which the panel is prepared. As far as casual workers are concerned, in order to curb arbitrary method being adopted by public undertaking for engaging casual workers on their whims and choice and in order to avoid any favouritism with public employment, the Supreme Court has already made it clear that a casual worker engaged by a public undertaking must continue to work till regular posts are filled in by following the recruitment rules. But in case there is no work available for casual workers, principle of last to come, first to go has to be followed and the casual workers who have been working and for whom there is no work left, the public undertaking concerned has to prepare a panel in which names of such casual workers are to be included in order of their seniority and whenever vacancy arises for engaging casual worker, the authority must offer the job in accordance with seniority in the panel of casual workers. But in case any emergency arises the authority can engage any worker without considering seniority for temporary emergent work but normally casual workers must be engaged from the said panel, if they are eligible for the post in accordance with recruitment rules on the basis of their seniority in the particular panel. This application is thus disposed of."

CW. 4113 & CM. 7465/1994:

Adjourned to 26-2-1996. Counsel for respondents may place on record panel of casual workers, if already prepared and if not prepared the same be prepared on the basis of the above guidelines.

3. In compliance of the said directions, the Airlines prepared a panel popularly known as panel of 1995. Airlines engaged casual workers, whose names appeared in the panel, so prepared on the direction of High Court of Delhi. ultimately the Writ Petition came to be disposed of vide order dated 7-5-1997. While disposing of the Writ Petition the High Court commanded that the Airlines shall take the select panel prepared and approved on 20-11-1990 as the base and will offer employment on ad-hoc / casual basis to the petitioners, according to their merit in the select panel. All such petitioners whose names appear in the select panel and are interested to work on casual basis or on ad-hoc

basis will report to the respondents within a period of 15 days.

4. Pursuant to the directions given by the High Court, the Airlines disengaged casual workers whose names did not find place in the select panel. Being aggrieved by that act some of the workers, whose name were there on the panel of 1995, filed a Writ Petition being CWP No. 2623/1997 before High Court of Delhi. It was emphasized by the High Court that the Airlines shall give an opportunity of being deployed to a person whose name had appeared in the select panel and he would be considered for regular appointment when the Airlines would like to fill up regular vacancies and in case he gets age barred for selection for regular appointment, he be given relaxation in the age limit.

5. On 12-11-2002 the Airlines issued an employment notification addressed to employment exchanges seeking names of casual labours to prepare a new panel for casual employment. It made the casual labours, whose names appeared in panel of 1995, to raise a demand to engage them against the job of casual labours. When the said demand was not conceded to, an industrial dispute was raised before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government made a reference of the dispute for adjudication to this Tribunal, vide order No.L-11012/6/2003-IR(C-II) New Delhi, dated 28-5-2004. The Airlines assailed the reference order by filing a Writ Petition being CWP No. 13581/2004. The High Court quashed the reference order with opportunity to the appropriate Government to take steps for issuance of fresh reference order. In compliance of the directions so given the appropriate Government referred the dispute to this Tribunal for adjudication, vide order No.L-11012/6/2003-IR(C-II) New Delhi dated 3-10-2005 with following terms.

"Whether the termination of the services of Shri Mahavir and 42 others (list enclosed) by the management of Indian Airlines Limited is legal and justified? If not, to what relief they are entitled?"

6. Claim statement was filed on behalf of the claimants, other than Ms. Arti Devi, pleading that they were engaged by the Airlines from 1989 onwards in the capacity of casual labours in its various departments, that is, commercial, commercial security, engineering, canteen, vigilance, personnel, catering and stores for the post of helper, peon sweeper, typist, and drivers etc. for various periods. Details of their names, department in which they were engaged, number of days put in service earlier to their continuous engagement by the Airlines, period from which they were continuously engaged, number of days of their continuous engagement, total number of days for which they had worked and dates of termination of their services are as follows:-

Sl. No.	Name of the employee	Designation	No. of days worked earlier to continuous employment	Continuous employment		No. of days worked continuously	Total number of working days
				From	To		
1.	Mahaveer	Commercial Helper	178	24.05.96	16.06.97	388	566
2.	Anil Kumar	Commercial Helper	179	24.04.95	01.09.97	861	1040
3.	Bharat Kumar	Commercial Helper	152	15.05.96	01.10.97	504	656
4.	Rakesh Mohan	Commercial Helper	135	01.05.96	14.08.97	470	605
5.	Surender Kumar	Safai Wala	129	11.11.96	05.06.97	206	335
6.	Arti Devi	Safai Wala	150	01.05.96	21.05.97	385	535
7.	Ramdas	Safai Wala	263	24.04.96	23.06.98	790	1053
8.	Ved Prakash	Safai Wala	181	02.05.96	18.02.98	657	838
9.	Satish Kumar	Safai Wala	150	01.05.96	21.02.98	661	811
10.	Harveer Singh	Canteen Helper	380	02.05.96	18.02.98	657	1037
11.	Ashok Kumar	Canteen Helper	183	23.05.96	21.09.97	486	669
12.	Rajender Singh	Canteen Helper	222	25.04.96	18.09.97	510	732
13.	Naresh Bisht	Canteen Helper	117	08.08.96	07.10.97	530	647
14.	Subhanth	M.T. Helper	103	13.05.96	04.08.97	361	464
15.	Karan Singh	Store Helper	146	01.01.93	05.08.97	449	595

7. Claimants project that during the year 1990 the Airlines prepared a list of 200 casual workers who had worked with them from time to time, for the purpose of regularization of their services. This list is popularly known as 1990 select list. Out of those 200 casual workers, services of 88 workers were regularized. The select list had a validity period of 2 years. The validity period of the select list was extended from time to time till 15-7-1994. The claimants assert that after preparation of the select list, the Airlines stated engaging new casual labours and the petitioners were engaged during that period. They, besides others, were engaged by the Airlines for casual jobs only for 89 days in a year so that the same worker does not work for more than 89 days in a year. In this manner the Airlines used to inject new personnel arbitrarily so that casual labours may not claim right to casual posts.

8. A group of casual labours, who were empanelled for the select list, filed a Writ Petition before High Court of Delhi seeking various reliefs including relief of regularization of their services. An ad interim relief of engaging them but not restricting to their employment to 89 days was also sought. A miscellaneous application being CM No. 6235/1995 was moved which was disposed off by the High Court on 7-12-1995. The High Court commanded the Airlines in the aforesaid order to prepare a panel of casual workers. In compliance of the said order,

the Airlines prepared a panel and the petitioners were placed in that panel which is popularly known as 1995 panel.

9. The petitioners project that Writ Petition being CWP No. 4113/1994 was finally decided by the High Court on 9-5-1997 directing the Airlines to engage on casual basis for its requirement either for the purpose of ad-hoc employment or on casual basis, firstly the person according to the merit from out of the select panel prepared and approved on 20-11-1990. When the person, whose name appeared on select panel, declines to work on casual basis the Airlines was entitled to engage persons from outside the panel.

10. After the dismissal of the Writ Petition, in the guise of implementation of direction dated 9-5-1997 the Airlines resorted to termination of services of the claimants and in their place fresh hands were engaged. The process of termination of their services stated in 1997 and continued till 7-10-1998. Termination of their services is illegal, unjustified and not warranted by law.

11. The claimants assert that they had completed more than 240 days continuous service at the time of their disengagement. No notice or pay in lieu thereof was given nor retrenchment compensation was paid to them. Mandatory provisions of Section 25F of the Industrial

Disputes Act, 1947 (In short the Act) were not complied with. Airlines made a faint attempt to say that termination of their service was necessitated to accommodate persons whose name appeared on select list. Such a claim was false to their own knowledge, since General Manager (Personnel) projected before the High Court that there existed 300 vacancies per day in the establishment of Airlines for casual workers. They assert that assuming that 112 casual workers were to be appointed out of select list then there remains huge number of vacancies for their engagement. In spite of clear cut direction of the High Court in its judgment dated 9-5-1997, the Airlines started to engage fresh casual hands arbitrarily, in complete disregard to 1995 panel. Despite existence of 1995 panel, the Airlines issued notification dated 12-11-2002 addressed to the employment exchange seeking names of the persons for preparation of a new panel of casual labour for casual employment. Preparation of such a panel is against directions contained in judgment dated 9-5-1997. The Airlines have no codified policies for engaging casual labourers and casual labourers are being engaged in violation of law laid down by Apex Court in various precedents. A Writ Petition was filed before High Court of Delhi being CWP No. 3343 of 1999 which was disposed of vide order dated 29-1-2002 with liberty to approach the authorities under the Act. It has been claimed that they are entitled for reinstatement in post of casual labours with full back wages and continuity of service.

12. The claim was demurred by the Airlines pleading that the reference made by the appropriate Government has been conclusively decided by the High Court in Writ Petitions being CWP 4113/1994, 2644 and 4799 both of 1997. It has also been pleaded that terms of reference project a proposition which is contrary to law laid down in *Uma Devi* [2006 (4) SCC 1] and *Daya Nand* [2008 (10) SCC-1]. The Airlines project that notifications were issued in 1988-89 notifying applications for certain vacancies on regular basis in the category of Helper (Engineering), Helper (Stores), Helper (Commercial). A panel of select candidates was prepared and approved on 22-11-1990, in accordance with the provisions of recruitment and promotion rules. The validity of the panel was for a period of two years, which validity expired on 15-7-1994. A large number of Writ Petitions were filed by different categories of casual workers and in one of the petition being CWP No. 4113 of 1994 the High Court passed interim order on 7-12-1995 directing the Airlines to prepare panel for engaging casual labours on daily basis from amongst the casual workers who had worked with the Airlines. In pursuant to that direction, the Airlines prepared a panel and started engaging casual labours from the said panel. Vide order dated 9-5-1997 Writ Petition being CWP No. 4113 of 1994, besides other petitions, was disposed of with directions to the Airlines to engage casuals on daily rate basis as per requirement from the persons whose name appear in the select panel prepared and approved on

21-12-1990. Consequently persons engaged on daily rate basis from the panel formulated in pursuance of order dated 7-12-1995 had to be discontinued. Persons whose names were on select panel were offered engagement on casual basis.

13. In the year 1997-98 another batch of Writ Petitions were filed by casual workers, similarly situated as the present claimants are, who were disengaged by the Airlines in pursuance of judgment dated 21-8-1998 directing the Airlines to give them an opportunity of being considered for regular appointment when such vacancies do occur and are filled and the person who become age barred would be given relaxation in age.

14. The Airlines project that the claimants are the casual workers who were engaged pursuant to the directions in the interim order referred above to meet exigency of work or sporadic absentees of regular employees. Their names were borne on panel formulated in 1995. Their services were discontinued as a result of judgment dated 9-5-1997. Their disengagement flows out of the judgment and cannot be termed as retrenchment, within the meaning of Section 2(oo) of the Act. Since their termination does not amount to retrenchment, there was no question of notice or pay in lieu thereof and payment of retrenchment compensation. Since the Airlines had engaged casual workers out of the select panel and no fresh persons were engaged, claimants have no right to seek their re-instatement in service. There does not exist any claim in favour of the claimants and an Award may be passed against them, pleads the Airlines.

15. Factum of preparation and approval of select panel, preparation of panel of 1995, disposal of Writ Petition vide judgment dated 9-5-1997 and thereafter disengagement of the claimants are not matters of dispute. Hence it emerged that there was no necessity to call for evidence of the parties. Consequently, the evidence of the parties were closed.

16. Arguments are heard at the bar. Shri Aditya Aggarwal, authorized representative, advanced argument on behalf of the claimants. Shri Lalit Bhasin, assisted by Shri Ravi Gopal, authorized representatives, advanced arguments on behalf of the Airlines. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

17. When facts are appreciated, it came to light that the Airlines engages casual employees in exigencies of work or when sporadic absentees of regular employees do occur. Such engagement of casual employees was done even prior to 1988-89. In 1988-89 notifications were issued by the Airlines for filling of certain vacancies on regular basis in the category of Helper (Engineering), Helper (Stores) and Helper (Commercial) etc. Requisition was also

made to the employment exchanges in accordance with the provisions of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. A separate notification was issued calling upon applications from persons who had worked with the Airlines on casual/temporary basis for a minimum of 90 days during the period of 12 completed months in last 3 years. Applications, so received, were processed and applicants were interviewed. A panel of 200 persons was prepared and approved on 20-11-1990, for appointment against regular vacancies subject to availability of post. It was made clear to empanelled candidates that their appointment would be made as and when vacancies would be available. Out of 200 candidates, persons whose names appeared up to serial No. 88 of the panel could be offered regular appointment in order of merit against available regular vacancies. The panel lapsed on 15-7-1994 and no further appointment on regular basis could be made out of the panel.

18. The Airlines engaged casuals persons whose names were not there in the select list. Various Writ Petitions were filed before the High Court of Delhi by casual workers, seeking their regularization in the service of the Airlines. In Writ Petition CWP No. 4113/1994 an ad-interim order was passed on 7-12-1995 directing the Airlines to prepare panel of casual workers. In pursuance of the directions, so given, a panel of casual workers was prepared who had been engaged by the Airlines from 1-1-1993 to 31-12-1995. Out of that panel of casual workers, the claimants were engaged in compliance of the orders passed by the High Court. Since posts could not to be filled on regular basis, the Airlines started deploying persons on casual basis. Thus it is emerging over the record that there were 3 types of casual employees namely, (i) whose names appear in the select list of 1990, (ii) who were engaged after 1990 but their names do not find place in 1995 panel, and (iii) casuals whose names do appear in 1995 panel.

19. While disposing of the Writ Petition, the High Court in its order dated 9-5-1997 emphasized that the Airlines had to engage casuals, whose names, appeared in the select panel. The observations made by the High Court are reproduced thus -

"It is not in dispute that select panel had been prepared. Pending appointment on regular basis, the respondent in order to cope with its work started deploying on ad-hoc basis casual persons only from the select panel. Petitioners are those persons. Respondent's case is that select panel has now come to an end. The mere fact that the validity of the select panel, which had been prepared for the regular employment had come to an end, could not have absorbed the respondent to ignore the said panel and then start resorting to engage persons from outside the said panel, ignoring the claim of the persons, who had been selected and included in the

select panel, who were being engaged on casual basis. In case respondent had as of necessity resorted to deploying persons either on ad-hoc basis or on casual basis for carrying on its day to day work, may be due to exigencies of work or because of absenteeism, respondent ought not to have replaced persons engaged earlier by deploying persons from outside the panel but ought to have deployed, from out of the panel since the respondent had started deploying them initially from the select panel. Petitioners before this court are those whose names were included in the panel. The stand taken by the respondent in the two additional affidavits of fixing artificial cut off date of 1-1-1993 on the plea that authentic record prior thereto was not available is not justifiable. Authentic record in the shape of select panel is available with the respondent. Since it is not disputed that the petitioners were brought on the select panel, they ought to have been preferred while offering employment or deploying any person from outside the select panel."

20. The High Court further noted that the Airlines shall replace a person whose name appeared in the select list possibly by a regular employee employed on regular basis and not by any other casual worker. The command given by the High Court is extracted thus:—

"In view of the above while holding the respondent's action to be arbitrary in the matter of preparation of the panel of casuals in the category of Helper (Engineering), Helper (Commercial), Helper (Motor Transport), Helper (Stores), Helper (Drivers), Helper (Canteen), Helper (Catering), Safai Wallas, Poon etc., respondents are directed to (i) engage on casual basis for its requirements either for the purpose of ad-hoc employment or on casual basis firstly the persons according to the merit from out of the select panel prepared and approved on 20-11-1990. Only when after due intimation the person will decline to work on casual basis that the respondents will be entitled to engage persons from outside the panel. So long such of the persons whose names appear in the select panel, are prepared to work on casual basis, till appointments are made on regular basis, the respondents will not discontinue them. Persons, whose names appear in the select panel, if deployed on casual basis or ad-hoc basis will be replaced only by regular employees on regular basis and not by any other casual worker. Taking the select panel as the basis the respondents will offer employment on ad-hoc/casual basis to the petitioners according to their merit in the select panel. All such petitioners whose names appear in the select panel are interested to work on casual basis or on ad-hoc basis will report to the respondent within a period of 15 days from today. The respondents will continue

to engage them till posts are filled on the regular basis. With these directions the Writ Petitions stand disposed off."

21. As per claim projected, names of the claimants do not appear in the select panel. In paragraph 11 of their claim statement they project that there are considerable vacancies with the Airlines and those vacancies should have been filled up from 1995 panel. For sake of convenience the facts are re-produced herein below :—

".....that as per the affidavit of General Manager (Personnel) of the respondent filed in the High Court there exist 300 vacancies per day in the respondent establishment for casual workers which number might have been increase at present. In 1990 list 88 workers were given regular appointment so that leaving only 112 workers in the list for casual employment. After the judgment date of 9-5-1997, out of 112 workers of the list only 37 workers joined duties as casual workers and the remaining 75 workers did not stake their claim for casual posts and abandoned the service. That does mean that out of 300 available posts only 37 workers of 1990 panel had been filled up leaving the vacant posts of 263 workers. The submission of the claimant workmen is that the remaining 263 posts should have been filled up from 1995 list, instead of recruiting the fresh hands at the whims and fancies of the respondent - management. That assuming but not admitting that the respondent-management gave employment to all the persons mentioned in 1990 list (200 workmen), still there remains not less than 100 vacancies available for the claimant workmen, who have found place in the second list, i.e. list of 1995....."

22. As admitted by the claimants, they were engaged by the Airlines in pursuance of interim order dated 7-12-1995 passed by the High Court. The said interim order lost its efficacy and force when Writ Petition was disposed of on 9-5-1997. As pointed out above, the Airlines was commanded to engage only the persons, whose names appear in the select panel. Admittedly the names of the claimants do not appear in the select panel. Thus it is evident that the claimants lost their claim, when the High Court commanded the Airlines not to engage casuals from 1995 panel. The claimants cannot agitate continuance of their engagement.

23. Question, which is to be addressed by the Tribunal, is as to whether disengagement of the claimants amount to retrenchment? For an answer definition of the word "retrenchment" is to be considered. Section 2 (oo) of the Act defines the term as follows:

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted

by way, of disciplinary action but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;"

24. As referred above, definition of word "retrenchment" consists of following four requirements:-

(a) Termination of services of workman

(b) By the employer

(c) For any reason whatsoever, and

(d) Otherwise than as a punishment inflicted by way of disciplinary action.

25. When the Act provides dictionary for the word used, in that situation it is essential that the Tribunal cannot look into the dictionary first for interpretation of the word used in the Act. Therefore, taking into account the definition of the term "retrenchment" given in the Act, the Tribunal is concerned to appreciate whether termination of the services of the claimant was by an act of the employer. On this count Shri Bhasin argued that claimants were disengaged on the command of the High Court, given in its judgment dated 9-5-1997. As pointed out above the High Court commanded the Airlines to offer employment on adhoc/casual basis to the petitioners whose names do appear in the select panel, according to their merit. All such persons, whose names appear in the select panel and are interested to work on casual basis or on ad-hoc basis were required to report to Airlines within a period of 15 days from the date of the order. Those persons were to be continued till posts were filled on regular basis. Directions, so given, make it clear that by the end of May, 1997 persons whose names appear in the select panel were required to join with the Airlines. On the other hand, the Airlines ought to have discontinued the services of the claimants herein by the end of May, 1997.

26. As per facts projected by the claimants. Shri Mahavir worked with the Airlines from 24-5-96 to 16-6-97. His services were disengaged thereafter. It does not lie in the mouth of the Airlines that services of Mahavir were done away in compliance of the order passed by the High Court on 9-5-1997. Rakesh Mohan, Subhanath and

Karan Singh were bade farewell in August 1997. Anil Kumar, Ashok Kumar and Rajender Singh were bade farewell in September 1997. Thereafter Bharat Kumar, Naresh Bisht were bade farewell in October 1997. Arti Devi departs on 21-5-97, Surender Kumar on 5-6-97, Ramdas on 23-6-98, Ved Prakash on 18-2-98, Satish Kumar on 21-2-98, and Harveer Singh was bade fare well on 18-2-98 itself. These starting facts make it clear that disengagement of the claimants was not in pursuance of the orders passed by the High Court of Delhi. On the other hand the said order was used as a tool by the Airlines to terminate services of the claimants.

27. Now it would be considered as to whether the claimants rendered continuous service for more than 240 days in preceding 12 month from respective dates of termination of their services. A workman would be deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days. "Continuous Service" has been defined by Section 25B of the Act. Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service." Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab. I.C. 1180) it was held that one year's period-contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment.

28. At the cost of repetition, it is said that claimants were retrenched on the dates mentioned in their claim, while they were engaged by the Airlines on dates mentioned in the claim statement. The Airlines nowhere project that their service were interrupted for any reasons other than those detailed in sub-section (1) of Section 25 B of the Act. The Airlines nowhere disputes that Shri Mahavir rendered continuous services from 24-5-96 to 16-6-97, Anil Kumar from 24-4-95 to 1-9-97, Bharat Kumar from 15-5-96 to

1-10-97, Rakesh Mohan from 1-5-96 to 14-8-97, Surender Kumar from 11-11-96 to 5-6-97, Arti Devi from 1-5-96 to 21-5-97, Ramdas from 24-4-96 to 23-6-98, Ved Prakash from 2-5-96 to 18-2-98, Satish Kumar from 1-5-96 to 21-2-98, Harveer Singh from 2-5-96 to 18-2-98, Ashok Kumar from 23-5-96 to 21-9-97, Rajender Singh from 26-4-96 to 18-9-97, Naresh Bisht from 25-4-96 to 7-10-97, Sobhanath from 8-8-96 to 4-8-97 and Karan Singh from 13-5-96 to 5-8-97. Therefore, it is emerging over the record that they have rendered continuous service of 240 days and more in each calendar year. Consequently it is emerging over the record that the claimants have rendered continuous service of one year in each calendar year. The claimants could satisfy that service rendered by them answers the definition of "continuous service" as defined in Section 25-B of the Act.

29. The claimants had rendered continuous service of a year or more, as contemplated by Section 25-B of the Act. Their services were dispensed with on different dates, detailed in preceding sections. They present that retrenchment compensation was not paid to them, which fact was not dispelled by the Airlines. The Airlines was under an obligation to pay them compensation for retrenchment at the time of their retrenchment. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists case* [1964 (1) L.J. 351], *Adaishwar Laal* (1970 Lab. I.C. 936) and *B.M. Gupta* [1979 (1) L.J. 168] announce that subsequent payment of compensation cannot validate an invalid order of retrenchment. As retrenchment compensation was not paid to the claimants, consequently action of the management falls within the mischief of Section 25-F of the Act.

30. These facts make me to announce that services of the claimants were dispensed with by the Airlines in violation of the provisions of Section 25F of the Act. However, it is not the case of the claimants that they were engaged in consonance with the rules of recruitment. None of them project that their names were sent by the employment exchange for the post of casual labour. Therefore, it is emerging over the record that engagement of the claimants by the Airlines was de-horse the rules. Admittedly they were engaged out of the panel prepared by the Airlines in pursuance of command given by the High Court.

31. In *Uma Devi* [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the Court declined the submissions of the workmen to be made permanent on

the post which was held by them in temporary or adhoc capacity for a fairly long spell. The Court ruled thus:

“With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent - the distinction between regularization and making permanent, was not emphasized here-can only encourage the State, the modal employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* (supra) is to some extent inconsistent with the conclusion in para 45 of the said judgment therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent.”

32. Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of article 162 of the Constitution. The Court quoted its decision in *Girish Jyanti Lal Vaghela* [2006 (2) SCC 482] with approval, wherein it was ruled thus.

“The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination? interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution”

33. In *P. Chandra Shekhara Rao and Others* [2006 (7) SCC 488] the Apex Court referred *Uma Devi's Case* (supra) with approval. It also relied the decision in *Uma Rani*

[2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In *Somveer Singh* [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. Relying the above law, it is concluded that the claimants have no right of continuance on casual jobs in which they were engaged dehors the rules. Hence no order for re-instatement of their services can be made, since it would amount to allow them to continue on a job where they were not law fully recruited.

34. When the claimants are not to be reinstated in service, in such a situation the Tribunal can award compensation to them. For award of compensation to the claimants, parameters for fixation of amount of compensation are to be noticed. The Apex Court and High Courts dealt with the issue of award of compensation in catena of decisions, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of compensation which may be awarded to the claimant. In *S.S. Shetty* [1957 (II) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

“The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future..... In computing the money value of the benefits of reinstatement, the Industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con”.

35. A Divisional Bench of the Patna High Court in *B. Choudhary* (1983) Lab. I. 1755 (1758) deduced certain

guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* (1989 Lab I.C. 1857).

36. In *Assam Oil Co. Ltd.* [1960 (1) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that "it would be fair and just to direct the appellant a substantial sum as compensation to her". In *Utkal Machinery Ltd.* [1966 (1) LLJ 398] the amount of compensation equivalent to two year salary of the employee Awarded by the Industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K. Roy* [1970 (1) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *Anil Kumar Chakaraborty* [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs. 50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P. Bhandari* [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M. K. Aggarwal* (1988 Lab. I.C. 380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Yashveer Singh* [1993 Lab. I.C. 44] the court directed payment of Rs. 75000 in view of reinstatement with back wages. In *Naval Kishor* [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Sant Raj* [1985 (II) LLJ 19] a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 Lab. I.C. 1225) a compensation of Rs. 2 lac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* (1988 Lab. I.C. 107) a compensation of Rs. 65000 was granted in lieu of reinstatement, since the

employee was gainfully employed elsewhere. In *V. V. Rao* (1991 Lab I.C. 1650) a compensation of Rs. 2.50 lac was awarded in lieu of reinstatement.

37. In view of the facts that the claimants have worked with the Airlines continuously for a period of more than 240 days in a calendar year preceding the date of their disengagement, the period for which they have worked and legal impediment before the Airlines to continue with their engagement as well as their young age, I am of the view that the claimants who had worked for 240 days or more in one calendar year shall get an amount of Rs. 25000 each, the claimants who had rendered more than 240 days service in each consecutive two calendar years or any part thereof in excess of six months will get an amount of Rs. 40,000 each and the claimants who had rendered more than 240 days continuous service in each consecutive three years or any part thereof in excess of six months will get an amount of Rs. 55000 each as compensation. The amount of compensation shall be reckoned in accordance with the period of continuous service of twelve, twenty four or thirty six months preceding the dates of their termination, as mentioned in para twenty eight supra. The amount of compensation shall be paid within thirty days of the date, when the award becomes enforceable. An award is accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated: 9-7-2012

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2820.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन एयरलाइन्स लिमिटेड के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, नई दिल्ली के पंचाट (आई डी संख्या 1/2006) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-11012/58/2004-आई आर (सीएम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2820.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/2006) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in the Annexure in the Industrial Dispute between the management of Indian Airlines Ltd. and their workmen, received by the Central Government on 13-8-2012

[No. 1-11012/58/2004-IR (CM-1)]
AJEET KUMAR, Section Officer

ANNEXURE

**BEFORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
NO.1, KARKARDOOMA COURTS COMPLEX, DELHI**

I. D. No. 1/2006

The President,
Delhi Offices And Establishment Employees Union,
3, V. P. House, Rafi Marg,
New Delhi-110001.

..... Workmen

Versus

The Chairman,
Indian Airlines Ltd.,
IGI Airport Terminal 1B,
New Delhi.

..... Management

AWARD

In the year 1988-89 erstwhile Indian Airlines Ltd., (in short the Airlines) Issued notification to fill certain vacancies on regular basis in the categories of Helper (Engineering), Helper (Stores) and Helper (Commercial) by inviting applications for amongst public at large. Requisitions were also sent to employment exchanges under the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. Applications were called from such persons who had worked with the Airlines on casual/ temporary basis for a minimum of 90 days during the period of 12 completed months in last three years. On receipt of the applications, selection process was undertaken. Applicants were interviewed and those who were found fit were empanelled, according to merit. Panel of over 200 candidates was approved by the competent authority on 20-11-1990. Empanelled candidates were informed that their appointment was subject to regular vacancies. Candidates only up to serial No. 88 of the panel could be offered regular appointment in order of merit against regular vacancies. Panel lapsed on 15-7-1994 and no further appointment on regular basis was made out of the said panel.

2. A group of casual workers, who had been empanelled, had filed Writ Petition (C) being No.4113 of 1994 before High Court of Delhi seeking various reliefs including relief of regularization in service. On 7-12-1995, relying on the decision in *Piara Singh* [1992 (4) SCC 118] the High Court passed interim order directing the Airlines to prepare a panel and to engage casual labour within the said panel as per their exigencies. For sake of convenience the order passed by the High Court is reproduced thus:-

“CM-6235/1995

“Guide lines for dealing with casual workers have already been elaborately given by the Supreme

Court in well known case of “*Piara Singh*” to some extent modified by certain guidelines given in the Horticulture case. We have gone through the policy of the respondents placed on record. We make it clear that there cannot be fixed period for existing a particular panel of casual workers because the question of panel replacing would only arise in respect of regular vacancies for which the panel is prepared. As far as casual workers are concerned, in order to curb arbitrary method being adopted by public undertaking for engaging casual workers on their whims and choice and in order to avoid any favouritism with public employment, the Supreme Court has already made it clear that a casual worker engaged by a public undertaking must continue to work till regular posts are filled in by following the recruitment rules. But in case there is no work available for casual workers, principle of last to come first to go has to be followed and the casual workers who have been working and for whom there is no work left the public undertaking concerned has to prepare a panel in which names of such casual workers are to be included in order of their seniority and whenever vacancy arises for engaging casual worker, the authority must offer the job in accordance with seniority in the panel of casual workers. But in case any emergency arises the authority can engage any worker without considering seniority for temporary emergent work but normally casual workers must be engaged from the said panel, if they are eligible for the post in accordance with recruitment rules on the basis of their seniority in the particular panel. This application is thus disposed of.”

CW. 4113 & CM. 7465/1994:

Adjourned to 26-2-1996. Counsel for respondents may place on record panel of casual workers, if already prepared and if not prepared the same be prepared on the basis of the above guidelines”.

3. In compliance of the said directions, the Airlines prepared a panel popularly known as panel of 1995. Airlines engaged casual workers, whose names appeared in the panel so prepared on the direction of High Court of Delhi. Ultimately, the Writ Petition came to be disposed of vide order dated 7-5-1997. While disposing of the Writ Petition the High Court commanded that the Airlines shall take the select panel prepared and approved on 20-11-1990 as the base and will offer employment on ad-hoc / casual basis to the petitioners, according to their merit in the select panel. All such petitioners whose names appear in the select panel and are interested to work on casual basis or on ad- hoc basis will report to the respondents within a period of 15 days.

4. Pursuant to the directions given by the High Court the Airlines disengaged casual workers whose names did

not find place in the select panel. Being aggrieved by that act some of the workers, whose name were there on the panel of 1995, filed a Writ Petition being CWP No. 2623/1997 before High Court of Delhi. It was emphasized by the High Court that the Airlines shall give an opportunity of being deployed to a person whose name had appeared in the select panel and he would be considered for regular appointment when the Airlines would like to fill up regular vacancies and in case he gets age barred for selection for regular appointment, he be given relaxation in the age limit.

5. On 12-11-2002 the Airlines issued an employment notification addressed to employment exchanges seeking names of casual labours to prepare a new panel for casual employment. It made the casual labours, whose names appeared in panel of 1995, to raise a demand to engage them against the job of casual labours. When the said demand was not conceded to, an industrial dispute was raised before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government made a reference of the dispute for adjudication to this Tribunal, vide order No. L-11012/58/2004-IR(C-1) New Delhi, dated 23-1-2006 with following terms.

“Whether the termination of the services of Shri Om Prakash and 17 others (list enclosed) by the management of Indian Airlines Limited is legal and justified? If not, to what relief they are entitled?”

6. Claim statement was filed on behalf of the claimants, other than Shri Om Parkash, Shri Ram Singh, Shri Sanjay, Shri Manoj Kumar, Shri Meer Singh, Shri Rajesh Kumar, Shri Raj Kapoor, Shri Ved Parkash, Shri Ajay Kumar, Shri Bacchi Ram, Shri Manpreet Singh, Shri Sanjeev Chadha and Shri Gopal Singh Negi, pleading that they were engaged by the Airlines from 1989 onwards in the capacity of casual labours in its various departments, that is, engineering, canteen, catering and stores for the post of helper, and sweeper etc. for various periods. Details of their names, department in which they were engaged, and dates of their appointments are as follows:-

S.No.	Name of the employee	Designation	Appointed on
1.	Prem Singh	Canteen Helper	18-4-96
2.	Brij Bhushan	Safai-Wala	15-4-96
3.	Sunil Kumar	Safai-Wala	18-4-96
4.	Anand Mani	Canteen Helper	29-10-96
5.	Rajesh Kumar	Engineering Helper	10-4-96

7. Claimants project that during the year 1990 the Airlines prepared a list of 200 casual workers who had worked with them from time to time, for the purpose of regularization of their services. This list is popularly known

as 1990 select list. Out of those 200 casual workers, services of 88 workers were regularized. The select list had a validity period of 2 years. The validity period of the select list was extended from time to time till 15-7-1994. The claimants assert that after preparation of the select list, the Airlines stated engaging new casual labours and the petitioners were engaged during that period. They, besides others, were engaged by the Airlines for casual jobs only for 89 days in a year so that the same worker does not work for more than 89 days in a year. In this manner the Airlines used to inject new personnel arbitrarily so that casual labours may not claim right to casual posts.

8. A group of casual labours, who were empanelled for the select list, filed a Writ Petition before High Court of Delhi seeking various reliefs including relief of regularization of their services. An ad interim relief of engaging them but not restricting to their employment to 89 days was also sought. A miscellaneous application being CM No. 6235/1995 was moved which was disposed of by the High Court on 7-12-1995. The High Court commanded the Airlines in the aforesaid order to prepare a panel of casual workers. In compliance of the said order, the Airlines prepared a panel and the petitioners were placed in that panel which is popularly known as 1995 panel.

9. The petitioners project that Writ Petition being CWP No. 4113/1994 was finally decided by the High Court on 9-5-1997 directing the Airlines to engage on casual basis for its requirement either for the purpose of ad-hoc employment or on casual basis, firstly the person according to the merit from out of the select panel prepared and approved on 20-11-1990. When the person, whose name appeared on select panel, declines to work on casual basis the Airlines was entitled to engage persons from outside the panel.

10. After the dismissal of the Writ Petition, in the guise of implementation of direction dated 9-5-1997 the Airlines resorted to termination of services of the claimants and in their place fresh hands were engaged. The process of termination of their services stated in 1997 and continued till 7-10-1998. Termination of their services is illegal, unjustified and not warranted by law.

11. The claimants assert that they had completed more than 240 days continuous service at the time of their disengagement. No notice or pay in lieu thereof was given nor retrenchment compensation was paid to them. Mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 (In short the Act) were not complied with. Airlines made a faint attempt to say that termination of their service was necessitated to accommodate persons whose name appeared on select list. Such a claim was false to their own knowledge, since General Manager (Personnel) projected before the High Court that there existed 300 vacancies per day in the establishment of Airlines for casual workers. They assert that assuming that 112 casual workers

were to be appointed out of select list then there remains huge number of vacancies for their engagement. In spite of clear cut direction of the High Court in its judgment dated 9-5-1997, the Airlines started to engage fresh casual hands arbitrarily, in complete disregard to 1995 panel. Despite existence of 1995 panel, the Airlines issued notification dated 12-11-2002 addressed to the employment exchange seeking names of the persons for preparation of a new panel of casual labour for casual employment. Preparation of such a panel is against directions contained in judgment dated 9-5-1997. The Airlines have no codified policies for engaging casual labourers and casual labourers are being engaged in violation of law laid down by Apex Court in various precedents. A Writ Petition was filed before High Court of Delhi being CWP No. 3343 of 1999 which was disposed of vide order dated 29-1-2002 with liberty to approach the authorities under the Act. It has been claimed that they are entitled for re-instatement in post of casual labours with full back wages and continuity of service.

12. The claim was demurred by the Airlines pleading that the reference made by the appropriate Government has been conclusively decided by the High Court in Writ Petitions being CWP 4113/1994, 2644 and 4799 both of 1997. It has also been pleaded that terms of reference project a proposition which is contrary to law laid down in *Uma Devi* [2006 (4) SCC 1] and *Daya Nand* [2008 (10) SCC-1]. The Airlines project that notifications were issued in 1988-89 notifying applications for certain vacancies on regular basis in the category of Helper (Engineering), Helper (Stores), Helper (Commercial). A panel of select candidates was prepared and approved on 22-11-1990, in accordance with the provisions of recruitment and promotion rules. The validity of the panel was for a period of two years, which validity expired on 15-7-1994. A large number of Writ Petitions were filed by different categories of casual workers and in one of the petition being CWP No. 4113 of 1994 the High Court passed interim order on 7-12-1995 directing the Airlines to prepare panel for engaging casual labours on daily basis from amongst the casual workers who had worked with the Airlines. In pursuance of that direction, the Airlines prepared a panel and started engaging casual labours from the said panel. Vide order dated 9-5-1997 Writ Petition being CWP No. 4113 of 1994, besides other petitions, was disposed of with directions to the Airlines to engage casuals on daily rate basis as per requirement from the persons whose name appear in the select panel prepared and approved on 21-12-1990. Consequently persons engaged on daily rate basis from the panel formulated in pursuance of order dated 7-12-1995 had to be discontinued. Persons whose names were on select panel were offered engagement on casual basis.

13. In the year 1997-98 another batch of Writ Petitions were filed by casual workers, similarly situated as the present claimants are, who were disengaged by the Airlines in pursuance of judgment dated 21-8-1998 directing the

Airlines to give them an opportunity of being considered for regular appointment when such vacancies do occur and are filled and the person who become age barred would be given relaxation in age.

14. The Airlines project that the claimants are the casual workers who were engaged pursuant to the directions in the interim order referred above to meet exigency of work or sporadic absentees of regular employees. Their names were borne on panel formulated in 1995. Their services were discontinued as a result of judgment dated 9-5-1997. Their disengagement flows out of the judgment and cannot be termed as retrenchment within the meaning of section 2(oo) of the Act. Since the termination does not amount to retrenchment, there was no question of notice or pay in lieu thereof and payment of retrenchment compensation. Since the Airlines had engaged casual workers out of the select panel and no fresh persons were engaged, claimants have no right to seek their re-instatement in service. There does not exist any claim in favour of the claimants and an Award may be passed against them, pleads the Airlines.

15. Factum of preparation and approval of select panel, preparation of panel of 1995, disposal of Writ Petition vide judgment dated 9-5-1997 and thereafter disengagement of the claimants are not matters of dispute. Hence it emerged that there was no necessity to call for evidence of the parties. Consequently, the evidence of the parties was closed.

16. Arguments are heard at the bar. Shri Aditya Aggarwal, authorized representative, advanced arguments on behalf of the claimants. Shri Lalit Bhasin, assisted by Shri Ravi Gopal, authorized representatives, advanced arguments on behalf of the Airlines. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows :—

17. When facts are appreciated, it came to light that the Airlines engages casual employees in exigencies of work or when sporadic absentees of regular employees do occur. Such engagement of casual employees was done even prior to 1988-89. In 1988-89 notifications were issued by the Airlines for filling of certain vacancies on regular basis in the category of Helper (Engineering), Helper (Stores) and Helper (Commercial) etc. Requisition was also made to the employment exchanges in accordance with the provisions of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. A separate notification was issued calling upon applications from persons who had worked with the Airlines on casual/temporary basis for a minimum of 90 days during the period of 12 completed months in last 3 years. Applications, so received, were processed and applicants were interviewed. A panel of 200 persons was prepared and approved on 20-11-1990, for appointment against regular vacancies subject to

availability of post. It was made clear to empanelled candidates that their appointment would be made as and when vacancies would be available. Out of 200 candidates, persons whose names appeared up to serial No. 88 of the panel could be offered regular appointment in order of merit against available regular vacancies. The panel lapsed on 15-7-1994 and no further appointment on regular basis could be made out of the panel.

18. The Airlines engaged casual persons whose names were not there in the select list. Various Writ Petitions were filed before the High Court of Delhi by casual workers, seeking their regularization in the service of the Airlines. In Writ Petition CWP No. 4113/1994 an ad-interim order was passed on 7-12-1995 directing the Airlines to prepare panel of casual workers. In pursuance of the directions, so given, a panel of casual workers was prepared who had been engaged by the Airlines from 1-1-1993 to 31-12-1995. Out of that panel of casual workers, the claimants were engaged in compliance of the orders passed by the High Court. Since posts could not be filled on regular basis, the Airlines started deploying persons on casual basis. Thus it is emerging over the record that there were 3 types of casual employees namely, (i) whose names appear in the select list of 1990, (ii) who were engaged after 1990 but their names do not find place in 1995 panel, and (iii) casuals whose names do appear in 1995 panel.

19. While disposing of the Writ Petition, the High Court in its order dated 9-5-1997 emphasized that the Airlines had to engage casuals, whose names, appeared in the select panel. The observations made by the High Court are reproduced thus :—

“It is not in dispute that select panel had been prepared. Pending appointment on regular basis, the respondent in order to cope with its work started deploying on ad-hoc basis casual persons only from the select panel. Petitioners are those persons. Respondent's case is that select panel has now come to an end. The mere fact that the validity of the select panel, which had been prepared for the regular employment had come to an end, could not have absorbed the respondent to ignore the said panel and then start resorting to engage persons from outside the said panel, ignoring the claim of the persons, who had been selected and included in the select panel, who were being engaged on casual basis. In case respondent had as of necessity resorted to deploying persons either on ad-hoc basis or on casual basis for carrying on its day to day work, may be due to exigencies of work or because of absenteeism, respondent ought not to have replaced persons engaged earlier by deploying persons from outside the panel but ought to have deployed, from out of the panel since the respondent had started deploying them initially from the select panel. Petitioners before this court are those whose names

were included in the panel. The stand taken by the respondent in the two additional affidavits of fixing artificial cut off date of 1-1-1993 on the plea that authentic record prior thereto was not available is not justifiable. Authentic record in the shape of select panel is available with the respondent. Since it is not disputed that the petitioners were brought on the select panel, they ought to have been preferred while offering employment or deploying any person from outside the select panel.”

20. The High Court further noted that the Airlines shall replace a person whose name appeared in the select list possibly by a regular employee employed on regular basis and not by any other casual worker. The command given by the High Court is extracted thus :—

“In view of the above while holding the respondent's action to be arbitrary in the matter of preparation of the panel of casuals in the category of Helper (Engineering), Helper (Commercial), Helper (Motor Transport), Helper (Stores), Helper (Drivers), Helper (Canteen), Helper (Catering), Safai Wallas, Peon etc., respondents are directed to (i) engage on casual basis for its requirements either for the purpose of ad-hoc employment or on casual basis firstly the persons according to the merit from out of the select panel prepared and approved on 20-11-1990. Only when after due intimation the person will decline to work on casual basis that the respondents will be entitled to engage persons from outside the panel. So long such of the persons whose names appear in the select panel, are prepared to work on casual basis, till appointments are made on regular basis, the respondents will not discontinue them. Persons, whose names appear in the select panel, if deployed on casual basis or ad-hoc basis will be replaced only by regular employees on regular basis and not by any other casual worker. Taking the select panel as the basis the respondents will offer employment on ad-hoc/casual basis to the petitioners according to their merit in the select panel. All such petitioners whose names appear in the select panel are interested to work on casual basis or on ad-hoc basis will report to the respondent within a period of 15 days from today. The respondents will continue to engage them till posts are filled on the regular basis. With these directions the Writ Petitions stand disposed off.”

21. As per claim projected, names of the claimants do not appear in the select panel. In paragraph 11 of their claim statement they project that there are considerable vacancies with the Airlines and those vacancies should have been filled up from 1995 panel. For sake of convenience the facts are re-produced herein below :—

“.....that as per the affidavit of General Manager

(Personnel) of the respondent filed in the High Court there exist 300 vacancies per day in the respondent establishment for casual workers which number might have been increase at present. In 1990 list 88 workers were given regular appointment so that leaving only 112 workers in the list for casual employment. After the judgment date of 9-5-1997, out of 112 workers of the list only 37 workers joined duties as casual workers and the remaining 75 workers did not stake their claim for casual posts and abandoned the service. That does mean that out of 300 available posts only 37 workers of 1990 panel had been filled up leaving the vacant posts of 263 workers. The submission of the claimant workmen is that the remaining 263 posts should have been filled up from 1995 list, instead of recruiting the fresh hands at the whims and fancies of the respondent-management. That assuming but not admitting that the respondent-management gave employment to all the persons mentioned in 1990 list (200 workmen), still there remains not less than 100 vacancies available for the claimant workmen, who have found place in the second list, i.e. list of 1995.....”

22. As admitted by the claimants, they were engaged by the Airlines in pursuance of interim order dated 7-12-1995 passed by the High Court. The said interim order lost its efficacy and force when Writ Petition was disposed of on 9-5-1997. As pointed out above, the Airlines was commanded to engage only the persons, whose names appear in the select panel. Admittedly the names of the claimants do not appear in the select panel. Thus it is evident that the claimants lost their claim, when the High Court commanded the Airlines not to engage casuals from 1995 panel. The claimants cannot agitate continuance of their engagement.

23. Question, which is to be addressed by the Tribunal, is as to whether disengagement of the claimants amount to retrenchment? For an answer definition of the word “retrenchment” is to be considered. Section 2 (oo) of the Act defines the term as follows :

“(oo) “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of

employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein ; or

(c) termination of the service of a workman on the ground of continued ill-health ;”

24. As referred above, definition of word “retrenchment” consists of following four requirements:—

- (a) Termination of services of workman
- (b) By the employer
- (c) For any reason whatsoever, and
- (d) Otherwise than as a punishment inflicted by way of disciplinary action.

25. When the Act provides dictionary for the word used, in that situation it is essential that the Tribunal cannot look into the dictionary first for interpretation of the word used in the Act. Therefore, taking into account the definition of the term “retrenchment” given in the Act, the Tribunal is concerned to appreciate whether termination of the services of the claimant was by the an act of the employer. On this count Shri Bhasin argued that claimants were disengaged on the command of the High Court, given in its judgment dated 9-5-1997. As pointed out above the High Court commanded the Airlines to offer employment on ad-hoc/casual basis to the petitioners whose names do appear in the select panel, according to their merit. All such persons, whose names appear in the select panel and are interested to work on casual basis or on ad-hoc basis were required to report to Airlines within a period of 15 days from the date of the order. Those persons were to be continued till posts were filled on regular basis. Directions, so given, make it clear that by the end of May, 1997 persons whose names appear in the select panel were required to join with the Airlines. On the other hand, the Airlines ought to have discontinued the services of the claimants herein by the end of May, 1997. However it is not a matter of dispute that services of the claimants herein were dispensed with on 7-10-1998.

26. As per facts projected by the claimants, Prem Singh worked with the Airlines from 18-4-1996 to 7-10-1998. His services were disengaged thereafter. It does not lie in the mouth of the Airlines that services of Prem Singh were done away in compliance of the order passed by the High Court on 9-5-1997. Brij Bhushan, Sunil Kumar, Anand Mani and Rajesh Kumar were bade fare well on 7-10-98 itself. These startling facts make it clear that disengagement of the claimants was not in pursuance of the orders passed by the High Court of Delhi. On the other hand the said order was used as a tool by the Airlines to terminate services of the claimants.

27. Now it would be considered as to whether the claimants rendered continuous service for more than 240 days in preceding 12 month from respective dates of

termination of their services. A workman would be deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days. "Continuous Service" has been defined by Section 25B of the Act. Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service." Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment.

28. At the cost of repetition, it is said that claimants were retrenched on the dates mentioned in their claim, while they were engaged by the Airlines on dates mentioned in the claim statement. The Airlines nowhere project that their service were interrupted for any reasons other than those detailed in sub-section (1) of Section 25 B of the Act. The Airlines nowhere disputes that Prem Singh worked with the Airlines from 18-4-1996 to 7-10-1998. Brij Bhushan, Sunil Kumar, Anand Mani and Rajesh Kumar rendered continuous services up to 7-10-98 itself. Therefore, it is emerging over the record that they have rendered continuous service of 240 days and more in each calendar year. Consequently it came over the record that the claimants have rendered continuous service of one year in each calendar year. The claimants could satisfy that service rendered by them answers the definition of "continuous service" as defined in Section 25-B of the Act.

29. The claimants had rendered continuous service of a year or more, as contemplated by Section 25-B of the Act. Their services were dispensed with on different dates, detailed in preceding Sections. They present that retrenchment compensation was not paid to them, which fact was not dispelled by the Airlines. The Airlines was under an obligation to pay them compensation for

retrenchment at the time of their retrenchment. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in *Bombay Union of Journalists* case [1964 (1) LLJ 351], *Adaishwar Laal* (1970 Lab.I.C.936) and *B.M.Gupta* [1979 (1) LLJ 168] announce that subsequent payment of compensation cannot validate an invalid order of retrenchment. As retrenchment compensation was not paid to the claimants, consequently action of the management falls within the mischief of Section 25-F of the Act.

30. These facts make me to announce that services of the claimants were dispensed with by the Airlines in violation of the provisions of Section 25F of the Act. However, it is not the case of the claimants that they were engaged in consonance with the rules of recruitment. None of them project that their names were sent by the employment exchange for the post of casual labour. Therefore, it is emerging over the record that engagement of the claimants by the Airlines was de-horse the rules. Admittedly they were engaged out of the panel prepared by the Airlines in pursuance of command given by the High Court.

31. In *Uma Devi* [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the Court declined the submissions of the workmen to be made permanent on the post which was held by them in temporary or adhoc capacity for a fairly long spell. The Court ruled thus:

"With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent - the distinction between regularization and making permanent, was not emphasized here-can only encourage the State, the nodal employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in *Piara Singh* (supra) is to some extent inconsistent with the conclusion in para 45 of the said judgment therein. With great respect, it appears to us that the last of the directions clearly runs counter to the constitutional scheme of employment recognized in the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent."

32. Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of article 162 of the Constitution. The Court quoted its decision in *Girish Jyanti Lal Vaghela* [2006 (2) SCC 482] with approval, wherein it was ruled thus.

“The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution”.

33. In *P.Chandra Shekhara Rao and Others* [2006 (7) SCC 488] the Apex Court referred *Uma Devi's Case* (supra) with approval. It also relied the decision in *Uma Rani* [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In *Somveer Singh* [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. Relying the above law, it is concluded that the claimants have no right of continuance on casual jobs in which they were engaged dehors the rules. Hence no order for re-instatement of their services can be made, since it would amount to allow them to continue on a job where they were not law fully recruited.

34. When the claimants are not to be reinstated in service, in such a situation the Tribunal can award compensation to them. For award of compensation to the claimants, parameters for fixation of amount of compensation are to be noticed. The Apex Court and High Courts dealt with the issue of award of compensation in catena of decisions, when reinstatement in service was not found expedient. Those precedents may help the Tribunal in ascertaining the quantum of compensation, which may be awarded to the claimant. In *S. S. Shetty* [1957 (II) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing

compensation in lieu of reinstatement, in the following words:

“The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future.....In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con”.

35. A Divisional Bench of the Patna High Court in *B.Choudhary* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* [1989 Lab.I.C.1887].

36. In *Assam Oil Co. Ltd.* [1960 (I) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered that “it would be fair and just to direct the appellant a substantial sum as compensation to her”. In *Utkal Machinery Ltd.* [1966 (I) LLJ 398] the amount of compensation equivalent to two year salary of the employee

awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In A.K. Roy (1970 (1) LLJ 228) compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In Anil Kumar Chakaraborty (1962 (II) LLJ 483) the Court converted the award of reinstatement into compensation of a sum of Rs.50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In O.P. Bhandari (1986 (II) LLJ 509), the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In M.K. Aggarwal (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In Yashveer Singh (1993 Lab.I.C.44) the court directed payment of Rs.75000 in view of reinstatement with back wages. In Naval Kishor (1984 (II) LLJ 473) the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In Sant Raj (1985 (II) LLJ 19) a sum of Rs. 2 lac was awarded as compensation in lieu of reinstatement. In Chandu Lal (1985 Lab. I.C.1225) a compensation of Rs.2 lac by way of back wages in lieu of reinstatement was awarded. In Ras Bihari (1988 Lab.I.C.107) a compensation of Rs.65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In V.V. Rao (1991 Lab. I.C.1650) a compensation of Rs.2.50 lac was awarded in lieu of reinstatement.

37. In view of the facts that the claimants have worked with the Airlines continuously for a period of more than 240 days in a calendar year preceding the date of their disengagement, the period for which they have worked and legal impediment before the Airlines to continue with their engagement as well as their young age, I am of the view that the claimants who had worked for 240 days or more in one calendar year shall get an amount of Rs. 25000 each, the claimants who had rendered more than 240 days service in each consecutive two calendar years or any part thereof in excess of six months will get an amount of Rs.40,000 each and the claimants who had rendered more than 240 days continuous service in each consecutive three years or any part thereof in excess of six months will get an amount of Rs.55000 each as compensation. The amount of compensation shall be reckoned in accordance with the period of continuous service of twelve, twenty four or thirty six months preceding the dates of their termination, as mentioned in para twenty eight supra. In respect of the employees, who. has not preferred their claim

statement, the Authority shall also consider whether their case falls within the ambit of award of compensation and if yes they be also paid compensation as per terms of the award. The amount of compensation shall be paid within thirty days of the date, when the award becomes enforceable. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated: 9-7-2012

नई दिल्ली, 13 अगस्त, 2012

का.आ. 2821.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इण्डियन एयरलाइन्स लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, नई दिल्ली के पंचाट (आई डी संख्या 27/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 13-8-2012 को प्राप्त हुआ था।

[सं. एल-11012/5/2003-आई आर (सी एम-1)]

अजीत कुमार, अनुभाग अधिकारी

New Delhi, the 13th August, 2012

S.O. 2821.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.27/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No 1, New Delhi as shown in the Annexure, in the industrial dispute between the management of Indian Airlines, and their workmen, received by the Central Government on 13-8-2012.

[No. L-11012/5/2003-IR (CM-I)]

AJEET KUMAR, Section Officer

ANNEXURE

**BERORE DR. R. K. YADAV, PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. 1, KARKARDOOMA COURTS
COMPLEX, DELHI**

I.D.No. 27/2005

The President,
Delhi Offices And
Establishment Employees Union,
3, V.P. House, Rafi Marg,
New Delhi-110001.

.... Workmen

Versus

The Chairman,
Indian Airlines Ltd.
IGI Airport Terminal 1B,
New Delhi.

.... Management

AWARD

In the year 1988-89 erstwhile Indian Airlines Ltd., (in short the Airlines) issued notification to fill certain vacancies on regular basis in the categories of Helper (Engineering), Helper (Stores) and Helper (Commercial) by inviting applications for amongst public at large. Requisitions were also sent to employment exchanges under the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. Applications were called from such persons who had worked with the Airlines on casual/temporary basis for a minimum of 90 days during the period of 12 completed months in last three years. On receipt of the applications, selection process was undertaken. Applicants were interviewed and those who were found fit were empanelled, according to merit. Panel of over 200 candidates was approved by the competent authority on 20-11-1990. Empanelled candidates were informed that their appointment was subject to regular vacancies. Candidates only up to serial No. 88 of the panel could be offered regular appointment in order of merit against regular vacancies. Panel lapsed on 15-7-1994 and no further appointment on regular basis was made out of the said panel.

2. A group of casual workers, who had been empanelled, had filed Writ Petition (C) being No. 4113 of 1994 before High Court of Delhi seeking various reliefs including relief of regularization in service. On 7-12-1995, relying on the decision in Piara Singh [1992 (4) SCC 118] the High Court passed interim order directing the Airlines to prepare a panel and to engage casual labour within the said panel as per their exigencies. For sake of convenience the order passed by the High Court is reproduced thus :—

“CM-6235/1995

“(CM) Guide lines for dealing with casual workers have already been elaborately given by the Supreme Court in well known case of “Piara Singh” to some extent modified by certain guidelines given in the Horticulture case. We have gone through the policy of the respondents placed on record. We make it clear that there cannot be fixed period for existing a particular panel of casual workers because the question of panel replacing would only arise in respect of regular vacancies for which the panel is prepared. As far as casual workers are concerned, in order to curb arbitrary method being adopted by public undertaking for engaging casual workers on their whims and choice and in order to avoid any favouritism

with public employment, the Supreme Court has already made it clear that a casual worker engaged by a public undertaking must continue to work till regular posts are filled in by following the recruitment rules. But in case there is no work available for casual workers, principle of last to come, first to go has to be followed and the casual workers who have been working and for whom there is no work left the public undertaking concerned has to prepare a panel in which names of such casual workers are to be included in order of their seniority and whenever vacancy arises for engaging casual worker, the authority must offer the job in accordance with seniority in the panel of casual workers. But in case any emergency arises the authority can engage any worker without considering seniority for temporary emergent work but normally casual workers must be engaged from the said panel, if they are eligible for the post in accordance with recruitment rules on the basis of their seniority in the particular panel. This application is thus disposed of.”

CW. 4113 and CM. 7465/1994:

Adjourned to 26-2-1996. Counsel for respondents may place on record panel of casual workers, if already prepared and if not prepared the same be prepared on the basis of the above guidelines”.

3. In compliance of the said directions, the Airlines prepared a panel popularly known as panel of 1995. Airlines engaged casual workers, whose names appeared in the panel, so prepared on the direction of High Court of Delhi. Ultimately the Writ Petition came to be disposed of vide order dated 7-5-1997. While disposing of the Writ Petition the High Court commanded that the Airlines shall take the select panel prepared and approved on 20-11-1990 as the base and will offer employment on ad-hoc/casual basis to the petitioners, according to their merit in the select panel. All such petitioners whose names appear in the select panel and are interested to work on casual basis or on ad-hoc basis will report to the respondents within a period of 15 days.

4. Pursuant to the directions given by the High Court, the Airlines disengaged casual workers whose names did not find place in the select panel. Being aggrieved by that act some of the workers, whose name were there on the panel of 1995, filed a Writ Petition being CWP No. 2623/1997 before High Court of Delhi. It was

emphasized by the High Court that the Airlines shall give an opportunity of being deployed to a person whose name had appeared in the select panel and he would be considered for regular appointment when the Airlines would like to fill up regular vacancies and in case he gets age barred for selection for regular appointment, he be given relaxation in the age limit.

5. On 12-11-2002 the Airlines issued an employment notification addressed to employment exchanges seeking names of casual labours to prepare a new panel for casual employment. It made the casual labours, whose names appeared in panel of 1995, to raise a demand to engage them against the job of casual labours. When the said demand was not conceded to, an industrial dispute was raised before the Conciliation Officer. Since conciliation proceedings failed, the appropriate Government made a reference of the dispute for adjudication to this Tribunal, vide order No.L-11012/5/2003-IR(C-II) New Delhi, dated 20-2-2004. The Airlines assailed the reference order by filing a Writ Petition being CWP No. 13580/2004. The High Court quashed the reference order with opportunity to the appropriate Government to take steps for issuance of fresh reference order. In compliance of the directions so given the appropriate Government

referred the dispute to this Tribunal for adjudication, vide order No.L-11012/5/2003-IR(C-II) New Delhi dated 3-10-2005 with following terms.

“Whether the termination of the services of Shri Ravinder Chandra and 42 others (list enclosed) by the management of Indian Airlines Limited is legal and justified? If not, to what relief they are entitled?”

6. Claim statement was filed on behalf of the claimants, other than Shri Om Parkash, Shri Dalbir Singh, Shri Naryan Singh, Shri Asha Singh, Shri Sohan Lal, Shri P. Sontil Kumar, Shri Sanjeev Jain and Shri Dinesh Kumar, pleading that they were engaged by the Airlines from 1989 onwards in the capacity of casual labours in its various departments, that is, commercial, commercial security, engineering, canteen, vigilance, personnel, catering and stores for the post of helper, peon, sweeper, typist, and drivers etc. for various periods. Details of their names, department in which they were engaged, number of days put in service earlier to their continuous engagement by the Airlines, period from which they were continuously engaged, number of days of their continuous engagement, total number of days for which they had worked and dates of termination of their services are as follows:—

Sl. No.	Name of the employee	Designation	No. of days worked earlier to continuous employment	Continuous employment	No. of days worked continuously	Total number of working days	
				From	To		
1	2	3	4	5	6	7	8
1.	Ravinder Chander	Commercial Helper	274	18-04-96	25-04-98	737	1011
2.	Lek Raj	Commercial Helper	159	15-04-96	10-08-97	482	641
3.	Mahesh Kumar	Commercial Helper	167	18-04-96	18-08-97	487	654
4.	Manoj Kumar Jha	Commercial Helper	168	29-10-96	14-08-97	289	457
5.	Bhagirath Sharma	Commercial Helper	153	10-04-96	30-08-97	507	660
6.	Memant Kumar	Commercial Helper	178	15-04-96	15-09-97	518	696
7.	Om Prakash	Commercial Sec-	178	24-04-96	09-09-97	503	681
8.	Daya Nand	Commercial Sec-	180	16-04-96	25-12-97	618	798
9.	Kapil Dev Ivin	Commercial Sec-	173	24-04-96	21-08-97	484	657
10.	Raj Kumar	Engineering Helper	153	13-05-96	20-11-97	556	709
11.	Mahesh Pandey	Engineering Helper	163	15-05-96	10-12-97	574	737
12.	Jagbir Singh	Engineering Helper	89	14-05-96	10-12-98	940	1029
13.	Ajay Kumar	Engineering Helper	222	01-05-96	05-01-99	979	1201
14.	Manish Kumar	Engineering Helper	92	15-05-96	10-11-98	909	1001
15.	Ashok Mandai	Engineering Helper	89	01-01-93	31-12-95	1094	1183
16.	Kuldeep Singh	Engineering Helper	167	15-05-96	17-01-98	612	779
17.	Dalbir Singh	Engineering Helper	100	08-08-96	24-07-97	350	450

1	2	3	4	5	6	7	8
18.	Om Sharma	Engineering Helper	151	01-05-96	14-11-97	562	713
19.	Anand Singh	Canteen Helper	254	22-04-96	19-11-97	576	830
20.	Robert	Canteen Helper	178	15-05-96	15-08-97	457	635
21.	Santosh Kumar	Canteen Helper	200	07-08-96	17-08-97	375	575
22.	Vinod Kumar	Canteen Helper	162	04-06-96	16-08-97	438	600
23.	Bahadur Singh	Canteen Helper	335	18-05-96	10-02-98	633	968
24.	Chand Singh	Canteen Helper	173	17-05-96	11-08-97	451	624
25.	Narayan Singh	Canteen Helper	163	24-07-96	17-08-97	389	552
26.	Rakesh Kumar	Canteen Helper	166	04-06-96	04-08-97	426	592
27.	Asha Singh	Canteen Helper	182	25-04-96	18-08-97	480	662
28.	Sohan Lal	Canteen Helper	229	06-05-96	14-08-97	465	694
29.	Premchand Saini	Peon	91	20-05-96	08-10-98	871	962
30.	Ranbir Singh	Peon	89	20-05-96	09-06-98	750	839
31.	P. Sontil Kumar	Peon	120	30-04-96	08-10-98	891	1011
32.	Kishan Kumar	Sweeper	91	15-03-96	24-06-98	831	922
33.	Rakesh	Sweeper	174	17-05-96	16-09-97	487	661
34.	Dharamvir	Sweeper	177	06-05-96	02-07-97	422	599
35.	Lokesh Kumar	Sweeper	246	26-04-96	14-12-97	597	843
36.	Ram Bahadur	Sweeper	172	30-05-96	28-08-97	455	627
37.	Ramesh Chand	Sweeper	146	06-11-96	02-01-98	422	568
38.	Ashok Kumar	Typist		15-07-96	21-10-98	828	828
39.	Sanjay Jain	Typist		12-08-96	20-10-98	799	799
40.	Love Kumar Sagar	Driver	146	16-04-96	12-09-98	879	1025
41.	Yogender Prasad	Driver	140	15-05-96	10-10-98	878	1018
42.	Dinesh Kumar	Driver		10-04-96	12-09-98	885	885
43.	Subodh Baita	M-T-Helper	120	29-05-96	29-07-97	426	546

7. Claimants project that during the year 1990 the Airlines prepared a list of 200 casual workers who had worked with them from time to time, for the purpose of regularization of their services. This list is popularly known as 1990 select list. Out of those 200 casual workers, services of 88 workers were regularized. The select list had a validity period of 2 years. The validity period of the select list was extended from time to time till 15-7-1994. The claimants assert that after preparation of the select list, the Airlines stated engaging new casual labours and the petitioners were engaged during that period. They, besides others, were engaged by the Airlines for casual jobs only for 89 days in a year so that the same worker does not work for more than 89 days in a year. In this manner the Airlines used to inject new personnel arbitrarily so that casual labours may not claim right to casual posts.

8. A group of casual labours, who were empanelled for the select list, filed a Writ Petition before High Court of Delhi seeking various reliefs including relief of regularization of their services. An ad interim relief of engaging them but not restricting to their employment to

89 days was also sought. A miscellaneous application being CM No. 6235/1995 was moved which was disposed off by the High Court on 7-12-1995. The High Court commanded the Airlines in the aforesaid order to prepare a panel of casual workers. In compliance of the said order, the Airlines prepared a panel and the petitioners were placed in that panel which is popularly known as 1995 panel.

9. The petitioners project that Writ Petition being CWP No. 4113/1994 was finally decided by the High Court on 9-5-1997 directing the Airlines to engage on casual basis for its requirement either for the purpose of ad-hoc employment or on casual basis, firstly the person according to the merit from out of the select panel prepared and approved on 20-11-1990. When the person, whose name appeared on select panel, declines to work on casual basis the Airlines was entitled to engage persons from outside the panel.

10. After the dismissal of the Writ Petition, in the guise of implementation of direction dated 9-5-1997 the Airlines resorted to termination of services of the claimants

and in their place fresh hands were engaged. The process of termination of their services stated in 1997 and continued till 7-10-1998. Termination of their services is illegal, unjustified and not warranted by law.

11. The claimants assert that they had completed more than 240 days continuous service at the time of their disengagement. No notice or pay in lieu thereof was given nor retrenchment compensation was paid to them. Mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 (In short the Act) were not complied with. Airlines made a faint attempt to say that termination of their service was necessitated to accommodate persons whose name appeared on select list. Such a claim was false to their own knowledge, since General Manager (Personnel) projected before the High Court that there existed 300 vacancies per day in the establishment of Airlines for casual workers. They assert that assuming that 112 casual workers were to be appointed out of select list then there remains huge number of vacancies for their engagement. In spite of clear cut direction of the High Court in its judgment dated 9-5-1997, the Airlines started to engage fresh casual hands arbitrarily, in complete disregard to 1995 panel. Despite existence of 1995 panel, the Airlines issued notification dated 12-11-2002 addressed to the employment exchange seeking names of the persons for preparation of a new panel of casual labour for casual employment. Preparation of such a panel is against directions contained in judgment dated 9-5-1997. The Airlines have no codified policies for engaging casual labourers and casual labourers are being engaged in violation of law laid down by Apex Court in various precedents. A Writ Petition was filed before High Court of Delhi being CWP No. 3343 of 1999 which was disposed of vide order dated 29-1-2002 with liberty to approach the authorities under the Act. It has been claimed that they are entitled for re-instatement in post of casual labours with full back wages and continuity of service.

12. The claim was demurred by the Airlines pleading that the reference made by the appropriate Government has been conclusively decided by the High Court in Writ Petitions being CWP 4113/1994, 2644 and 4799 both of 1997. It has also been pleaded that terms of reference project a proposition which is contrary to law laid down in *Uma Devi* [2006 (4) SCC 1] and *Daya Nand* [2008 (10) SCC-1]. The Airlines project that notifications were issued in 1988-89 notifying applications for certain vacancies on regular basis in the category of Helper (Engineering), Helper (Stores), Helper (Commercial). A panel of select candidates was prepared and approved on 22-11-1990, in accordance with the provisions of recruitment and promotion rules. The validity of the panel was for a period of two years, which validity expired on 15-7-1994. A large number of Writ Petitions were filed by different categories of casual workers and in one of the petition being CWP No. 4113 of 1994 the High Court passed interim order on 7-12-1995

directing the Airlines to prepare panel for engaging casual labours on daily basis from amongst the casual workers who had worked with the Airlines. In pursuance to that direction, the Airlines prepared a panel and started engaging casual labours from the said panel. Vide order dated 9-5-1997 Writ Petition being CWP No. 4113 of 1994, besides other petitions, was disposed of with directions to the Airlines to engage casuals on daily rate basis as per requirement from the persons whose name appear in the select panel prepared and approved on 21-12-1990. Consequently persons engaged on daily rate basis from the panel formulated in pursuance of order dated 7-12-1995 had to be discontinued. Persons whose names were on select panel were offered engagement on casual basis.

13. In the year 1997-98 another batch of Writ Petitions were filed by casual workers, similarly situated as the present claimants are, who were disengaged by the Airlines in pursuance of judgment dated 21-8-1998 directing the Airlines to give them an opportunity of being considered for regular appointment when such vacancies do occur and are filled and the person who become age barred would be given relaxation in age.

14. The Airlines project that the claimants are the casual workers who were engaged pursuant to the directions in the interim order referred above to meet exigency of work or sporadic absentees of regular employees. Their names were borne on panel formulated in 1995. Their services were discontinued as a result of judgment dated 9-5-1997. Their disengagement flows out of the judgment and cannot be termed as retrenchment, within the meaning of Section 2(oo) of the Act. Since their termination does not amount to retrenchment, there was no question of notice or pay in lieu thereof and payment of retrenchment compensation. Since the Airlines had engaged casual workers out of the select panel and no fresh persons were engaged, claimants have no right to seek their re-instatement in service. There does not exist any claim in favour of the claimants and an Award may be passed against them, pleads the Airlines.

15. Testimony of claimant Ravinder Chandra was recorded. Besides his evidence 19 other claimants also entered the witness box. Their examination-in-chief were also recorded. During the course of recording evidence of claimants, it emerged over the record that factum of preparation and approval of select panel, preparation of panel of 1995, disposal of Writ Petition vide judgment dated 9-5-1997 and thereafter disengagement of the claimants are not matters of dispute. Hence it emerged that there was no necessity to call for evidence of the parties. Consequently, the evidence of the parties were closed.

16. Arguments are heard at the bar. Shri Aditya Aggarwal, authorized representative, advanced argument on behalf of the claimants. Shri Lalit Bhasin, assisted by

Shri Ravi Gopal, authorized representatives, advanced arguments on behalf of the Airlines. I have given my careful consideration to the arguments advanced at the bar and cautiously perused the record. My findings on issues involved in the controversy are as follows:—

17. When facts are appreciated, it came to light that the Airlines engages casual employees in exigencies of work or when sporadic absentees of regular employees do occur. Such engagement of casual employees was done even prior to 1988-89. In 1988-89 notifications were issued by the Airlines for filling of certain vacancies on regular basis in the category of Helper (Engineering), Helper (Stores) and Helper (Commercial) etc. Requisition was also made to the employment exchanges in accordance with the provisions of Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. A separate notification was issued calling upon applications from persons who had worked with the Airlines on casual/temporary basis for a minimum of 90 days during the period of 12 completed months in last 3 years. Applications, so received, were processed and applicants were interviewed. A panel of 200 persons was prepared and approved on 20-11-1990, for appointment against regular vacancies subject to availability of post. It was made clear to empanelled candidates that their appointment would be made as and when vacancies would be available. Out of 200 candidates, persons whose names appeared up to serial No. 88 of the panel could be offered regular appointment in order of merit against available regular vacancies. The panel lapsed on 15-7-1994 and no further appointment on regular basis could be made out of the panel.

18. The Airlines engaged casuals persons whose names were not there in the select list. Various Writ Petitions were filed before the High Court of Delhi by casual workers, seeking their regularization in the service of the Airlines. In Writ Petition CWP No. 4113/1994 an ad-interim order was passed on 7-12-1995 directing the Airlines to prepare panel of casual workers. In pursuance of the directions, so given, a panel of casual workers was prepared who had been engaged by the Airlines from 1-1-1993 to 31-12-1995. Out of that panel of casual workers, the claimants were engaged in compliance of the orders passed by the High Court. Since posts could not to be filled on regular basis, the Airlines started deploying persons on casual basis. Thus it is emerging over the record that there were 3 types of casual employees namely, (i) whose names appear in the select list of 1990, (ii) who were engaged after 1990 but their names do not find place in 1995 panel, and (iii) casuals whose names do appear in 1995 panel.

19. While disposing of the Writ Petition, the High Court in its order dated 9-5-1997 emphasized that the Airlines had to engage casuals, whose names, appeared in the select panel. The observations made by the High Court are reproduced thus:—

“It is not in dispute that select panel had been prepared. Pending appointment on regular basis, the respondent in order to cope with its work started deploying on ad-hoc basis casual persons only from the select panel. Petitioners are those persons. Respondent's case is that select panel has now come to an end. The mere fact that the validity of the select panel, which had been prepared for the regular employment had come to an end, could not have absorbed the respondent to ignore the said panel and then start resorting to engage persons from outside the said panel, ignoring the claim of the persons, who had been selected and included in the select panel, who were being engaged on casual basis. In case respondent had as of necessity resorted to deploying persons either on ad-hoc basis or on casual basis for carrying on its day to day work, may be due to exigencies of work or because of absenteeism, respondent ought not to have replaced persons engaged earlier by deploying persons from outside the panel but ought to have deployed, from out of the panel since the respondent had started deploying them initially from the select panel. Petitioners before this court are those whose names were included in the panel. The stand taken by the respondent in the two additional affidavits of fixing artificial cut off date of 1-1-1993 on the plea that authentic record prior thereto was not available is not justifiable. Authentic record in the shape of select panel is available with the respondent. Since it is not disputed that the petitioners were brought on the select panel, they ought to have been preferred while offering employment or deploying any person from outside the select panel.”

20. The High Court further noted that the Airlines shall replace a person whose name appeared in the select list possibly by a regular employee employed on regular basis and not by any other casual worker. The command given by the High Court is extracted thus:—

“In view of the above while holding the respondent's action to be arbitrary in the matter of preparation of the panel of casuals in the category of Helper (Engineering), Helper (Commercial), Helper (Motor Transport), Helper (Stores), Helper (Drivers), Helper (Canteen), Helper (Catering), Safai Wallas, Peon etc., respondents are directed to (i) engage on casual basis for its requirements either for the purpose of ad-hoc employment or on casual basis firstly the persons according to the merit from out of the select panel prepared and approved on 20-11-1990. Only when after due intimation the person will decline to work on casual basis that the respondents will be entitled to engage persons from outside the panel. So long such of the persons whose names appear in the select panel, are prepared to

work on casual basis, till appointments are made on regular basis, the respondents will not discontinue them. Persons, whose names appear in the select panel, if deployed on casual basis or ad-hoc basis will be replaced only by regular employees on regular basis and not by any other casual worker. Taking the select panel as the basis the respondents will offer employment on ad-hoc/casual basis to the petitioners according to their merit in the select panel. All such petitioners whose names appear in the select panel are interested to work on casual basis or on ad-hoc basis will report to the respondent within a period of 15 days from today. The respondents will continue to engage them till posts are filled on the regular basis. With these directions the Writ Petitions stand disposed off."

21. As per claim projected, names of the claimants do not appear in the select panel. In paragraph 11 of their claim statement they project that there are considerable vacancies with the Airlines and those vacancies should have been filled up from 1995 panel. For sake of convenience the facts are re-produced herein below:—

"... that as per the affidavit of General Manager (Personnel) of the respondent filed in the High Court there exist 300 vacancies per day in the respondent establishment for casual workers which number might have been increase at present. In 1990 list 88 workers were given regular appointment so that leaving only 112 workers in the list for casual employment. After the judgment date of 9-5-1997, out of 112 workers of the list only 37 workers joined duties as casual workers and the remaining 75 workers' did not stake their claim for casual posts and abandoned the service. That does mean that out of 300 available posts only 37 workers of 1990 panel had been filled up leaving the vacant posts of 263 workers. The submission of the claimant workmen is that the remaining 263 posts should have been filled up from 1995 list, instead of recruiting the fresh hands at the whims and fancies of the respondent - management. That assuming but not admitting that the respondent - management gave employment to all the persons mentioned in 1990 list (200 workmen), still there remains not less than 100 vacancies available for the claimant workmen, who have found place in the second list, i.e. list of 1995....."

22. As admitted by the claimants, they were engaged by the Airlines in pursuance of interim order dated 7-12-1995 passed by the High Court. The said interim order lost its efficacy and force when Writ Petition was disposed of on 9-5-1997. As pointed out above, the Airlines was commanded to engage only the persons, whose names appear in the select panel. Admittedly the names of the claimants do not appear in the select panel. Thus it is

evident that the claimants lost their claim, when the High Court commanded the Airlines not to engage casuals from 1995 panel. The claimants cannot agitate continuance of their engagement.

23. Question, which is to be addressed by the Tribunal, is as to whether disengagement of the claimants amount to retrenchment? For an answer definition of the word "retrenchment" is to be considered. Section 2 (oo) of the Act defines the term as follows:

"(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include—

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under the stipulation in that behalf contained therein; or
- (c) termination of the service of a workman on the ground of continued ill-health."

24. As referred above, definition of word "retrenchment" consists of following four requirements:—

- (a) Termination of services of workman
- (b) By the employer
- (c) For any reason whatsoever, and
- (d) Otherwise than as a punishment inflicted by way of disciplinary action.

25. When the Act provides dictionary for the word used, in that situation it is essential that the Tribunal cannot look into the dictionary first for interpretation of the word used in the Act. Therefore, taking into account the definition of the term "retrenchment" given in the Act, the Tribunal is concerned to appreciate whether termination of the services of the claimant was by an act of the employer. On this count Shri Bhasin argued that claimants were disengaged on the command of the High Court, given in its judgment dated 9-5-1997. As pointed out above the High Court commanded the Airlines to offer employment on ad-hoc/casual basis to the petitioners whose names do appear in the select panel, according to their merit. All such persons, whose names appear in the select panel and are interested to work on casual basis or on ad-hoc basis were required to report to Airlines within a period of 15 days from the date of the order. Those

persons were to be continued till posts were filled on regular basis. Directions, so given, make it clear that by the end of May, 1997 persons whose names appear in the select panel were required to join with the Airlines. On the other hand, the Airlines ought to have discontinued the services of the claimants herein by the end of May, 1997. Except Dharamveer, Subodh Bhatia and Dalbir Singh whose services were disengaged on 2-7-1997, 29-7-1997 and 24-7-1997 respectively, no one else was disengaged in the month of July, 1997.

26. As per facts projected by the claimants, Ashok Mandal worked with the Airlines from 1-1-1993 to 31-12-1995. His services were disengaged thereafter. It does not lie in the mouth of the Airlines that services of Ashok Mandal were done away in compliance of the order passed by the High Court on 9-5-1997. Lekh Raj, Mahesh Kumar, Manoj Kumar Jha, Bhagirath Sharma, Kapil Dev Din, Robert, Satish Kumar, Vinod Kumar, Chand Singh, Narayan Singh, Rakesh Kumar, Asha Singh, Sohan Lal and Ram Bahadur were bade farewell in August 1997. Thereafter Raj Kumar was made to depart on 20-11-1997, Mahesh Pandey on 10-12-1997, Om Sharma on 24-11-1997, Anant Singh on 19-11-1997 and Lokesh Kumar was bade farewell on 14-12-1997. Other claimants were made to depart in the year 1998 except Shri Ajay Kumar, who worked up to 5-1-1999. These startling facts make it clear that disengagement of the claimants was not in pursuance of the orders passed by the High Court of Delhi. On the other hand the said order was used as a tool by the Airlines to terminate services of the claimants.

27. Now it would be considered as to whether the claimants rendered continuous service for more than 240 days in preceding 12 month from respective dates of termination of their services. A workman would be deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of termination, has actually worked under the employer for not less than 240 days. "Continuous Service" has been defined by Section 25B of the Act. Under sub-section (1) of the said section, "continuous service for a period" may comprise of two period viz. (i) uninterrupted service, and (ii) interrupted service on account of (a) sickness, (b) authorized leave, (c) an accident, (d) a strike which is not legal, (e) a lock-out, and (f) a cessation of work that is not due to any fault on the part of the workman, shall be included in the "continuous service." Sub-section (2) of the said section introduces a fiction to the effect that even if a workman is not in "continuous service" within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) thereof. In *Vijay Kumar Majoo* (1968 Lab.I.C.1180) it was held that one year's period contemplated by sub-section (2) furnished a unit of measure and if during that unit of

measure the period of service actually rendered by the workman is 240 days, then he can be considered to have rendered one year's continuous service for the purpose of the section. The idea is that if within a unit period of one year a person had put in at least 240 days of service, then he must get the benefit conferred by the Act. Consequently, an enquiry has to be made to find out whether the workman has actually worked for not less than 240 days during a period of 12 calendar months immediately preceding the retrenchment.

28. At the cost of repetition, it is said that claimants were retrenched on the dates mentioned in their claim, while they were engaged by the Airlines on dates mentioned in the claim statement. The Airlines nowhere project that their service were interrupted for any reasons other than those detailed in sub-section (1) of Section 25 B of the Act. The Airlines nowhere disputes that Shri Ravinder Chander rendered continuous services from 18-4-96 to 25-4-98, Lekh Raj from 15-4-96 to 10-8-97, Mahesh Kumar from 18-4-96 to 18-8-97, Manoj Kumar Jha from 29-10-96 to 14-8-97, Bhagirath Sharma from 10-4-96 to 30-8-97, Memant Kumar from 15-4-96 to 15-9-97, Om Prakash from 24-4-96 to 9-9-97, Daya Nand from 16-4-96 to 25-12-97, Kapil Dev Din from 24-12-96 to 21-8-97, Raj Kumar from 13-5-96 to 20-11-97, Mahesh Pandey from 15-5-96 to 10-12-97, Jagbir Singh from 14-5-96 to 10-12-98, Ajay Kumar from 1-5-96 to 5-1-99, Manish Kumar from 15-5-96 to 10-11-98, Ashok Mandal from 1-1-93 to 31-12-95, Kuldeep Singh from 15-5-96 to 17-1-98, Dalbir Singh from 8-8-96 to 24-7-97, Om Sharma from 1-5-96 to 14-11-97, Anand Singh from 22-4-96 to 19-11-97, Robert from 15-5-96 to 15-8-97, Santosh Kumar from 7-8-96 to 17-8-97, Vinod Kumar from 4-6-96 to 16-8-97, Bahadur Singh from 18-5-96 to 10-2-98, Chand Singh from 17-5-96 to 11-8-97, Narayan Singh from 24-7-96 to 17-8-97, Rakesh Kumar from 4-6-96 to 4-8-97, Asha Singh from 25-4-96 to 18-8-97, Sohan Lal from 6-5-96 to 14-8-97, Prem Chand Saini from 25-5-96 to 8-10-98, Ranbir Singh from 20-5-96 to 9-6-98, P.Sontil Kumar from 30-4-96 to 8-10-98, Kishan Kumar from 15-3-96 to 24-6-98, Rakesh from 17-5-96 to 16-9-97, Dharamvir from 6-5-96 to 2-7-97, Lokesh Kumar from 26-4-96 to 14-12-97, Ram Bahadur from 30-5-96 to 28-8-97, Ramesh Chand from 6-11-97 to 2-1-98, Ashok Kumar from 15-7-96 to 21-10-98, Sanjay Jain from 12-8-96 to 20-10-98, Love Kumar Sagar from 16-4-96 to 12-9-98, Yogender Prasad from 15-5-96 to 10-10-98, Dinesh Kumar from 10-4-96 to 12-9-98 and Subodh Batia from 29-5-96 to 29-7-97. Therefore, it is emerging over the record that they have rendered continuous service of 240 days and more in each calendar year. Consequently it is emerging over the record that the claimants have rendered continuous service of one year in each calendar year. The claimants could satisfy that service rendered by them answers the definition of "continuous service" as defined in Section 25-B of the Act.

29. The claimants had rendered continuous service of a year or more, as contemplated by Section 25-B of the

Act. Their services were dispensed with on different dates, detailed in preceding sections. They present that retrenchment compensation was not paid to them, which fact was not dispelled by the Airlines. The Airlines was under an obligation to pay them compensation for retrenchment at the time of their retrenchment. Payment of retrenchment compensation is a condition precedent to a valid order of retrenchment. Precedents in Bombay Union of Journalists case [1964 (1) LLJ 351], Adashwar Laal (1970 Lab.I.C.936) and B.M.Gupta [1979 (1) LLJ 168] announce that subsequent payment of compensation cannot validate an invalid order of retrenchment. As retrenchment compensation was not paid to the claimants, consequently action of the management falls within the mischief of Section 25-F of the Act.

30. These facts make me to announce that services of the claimants were dispensed with by the Airlines in violation of the provisions of Section 25F of the Act. However, it is not the case of the claimants that they were engaged in consonance with the rules of recruitment. None of them project that their names were sent by the employment exchange for the post of casual labour. Therefore, it is emerging over the record that engagement of the claimants by the Airlines was de-horse the rules. Admittedly they were engaged out of the panel prepared by the Airlines in pursuance of command given by the High Court.

31. In Uma Devi [2006 (4) SCC 1] the Apex Court considered the proposition as to whether the persons who got employment, without following of a regular procedure or even from the back door or on daily wages can be ordered to be made permanent in their posts, to prevent regular recruitment to the posts concerned. Catena of decisions over the subject were considered and the Court declined the submissions of the workmen to be made permanent on the post which was held by them in temporary or adhoc capacity for a fairly long spell. The Court ruled thus:

“With respect, why should the State be allowed to depart from the normal rule and indulge in temporary employment in permanent posts? This Court, in our view, is bound to insist on the State making regular and proper recruitments, and is bound not to encourage or shut its eyes to the persistent transgression of the rules of regular recruitment. The direction to make permanent—the distinction between regularization and making permanent, was not emphasized here—can only encourage the State, the modal employer, to flout its own rules and would confer undue benefits on a few at the cost of many waiting to compete. With respect the directions made in Piara Singh (supra) is to some extent inconsistent with the conclusion in para 45 of the said judgment therein. With great respect, it appears to us that the last of the directions, clearly runs counter to the constitutional scheme of employment recognized in

the earlier part of the decision. Really, it cannot be said that this decision has laid down the law that all ad-hoc, temporary or casual employees engaged without following a regular recruitment procedure should be made permanent.”

31. Taking note of some of recent decisions, the Apex Court held that the State does not enjoy a power to make appointments in terms of article 162 of the Constitution. The Court quoted its decision in Girish Jyanti Lal Vaghela [2006 (2) SCC 482] with approval, wherein it was ruled thus.

“The appointment to any post under the State can only be made after a proper advertisement has been made inviting applications from eligible candidates and holding of a selection by a body of experts or a specially constituted committee whose members are fair and impartial through a written examination or interview or some other rational criteria for judging the inter se merit of candidates who have applied in response to the advertisement made. A regular appointment to the post under the State or Union cannot be made without issuing advertisement in the prescribed manner which may in some cases include inviting applications from the employment exchange, where eligible candidate get their names registered. Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution”.

33. In P.Chandra Shekhara Rao and Others [2006 (7) SCC 488] the Apex Court referred Uma Devi's Case (supra) with approval. It also relied the decision in a Uma Rani [2004 (7) SCC 112] and ruled that no regularization is permissible in exercise of statutory powers conferred in Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. In Somveer Singh [2006 (5) SCC 493] the Apex Court ruled that appointment made without following due procedure cannot be regularized. Relying the above law, it is concluded that the claimants have no right of continuance on casual jobs in which they were engaged dehors the rules. Hence no order for re-instatement of their services can be made, since it would amount to allow them to continue on a job where they were not law-fully recruited.

34. When the claimants are not to be reinstated in service, in such a situation the Tribunal can award compensation to them. For award of compensation to the claimants, parameters for fixation of amount of compensation are to be noticed. The Apex Court and High Courts dealt with the issue of award of compensation in catena of decisions, when reinstatement in service was not found expedient. Those precedents may help the

Tribunal in ascertaining the quantum of compensation, which may be awarded to the claimant. In *S. S. Shetty* [1957 (II) LLJ 696] the Apex Court indicated some relevant factors which an adjudicator has to take into account in computing compensation in lieu of reinstatement, in the following words:

“The industrial Tribunal would have to take into account the terms and conditions of employment, the tenure of service, the possibility of termination of the employment at the instance of either party, the possibility of retrenchment by the employer or resignation or retirement by the workman and even of the employer himself ceasing to exist or of the workman being awarded various benefits including reinstatement under the terms of future awards by industrial Tribunal in the event of industrial disputes arising between the parties in future In computing the money value of the benefits of reinstatement, the industrial adjudicator would also have to take into account the present value of what his salary, benefits etc. would be till he attained the age of superannuation and the value of such benefits would have to be computed as from the date when such reinstatement was ordered under the terms of the award.

Having regard to the considerations detailed above, it is impossible to compute the money value of this benefit of reinstatement awarded to the appellant with mathematical exactitude and the best that any tribunal or court would do under the circumstances would be to make as correct as estimate as is possible bearing, of course in mind all the relevant factors pro and con”.

35. A Divisional Bench of the Patna High Court in *B.Choudhary* (1983) Lab.I.1755 (1758) deduced certain guidelines which have to be borne in mind in determining the quantum of compensation viz. (i) the back wages receivable (ii) compensation for deprivation of the job with future prospect and obtainability of alternative employment; (iii) employee's age (iv) Length of service in the establishment (v) capacity of the employer to pay and the nature of the employer's business (vi) gainful employment in mitigation of damages; and (viii) circumstances leading to the disengagement and the past conduct. These factors are only illustrative and not exhaustive. In addition to the amount of compensation, it is also within the jurisdiction of the Tribunal to award interest on the amount determined as compensation. Furthermore, the rate of such interest is also in the discretion of the Tribunal. Reference can be made to *Tabesh Process, Shivakashi* [1989 Lab.IC 1887].

36. In *Assam Oil Co. Ltd.* [1960 (I) LLJ 587] the Apex Court took into account countervailing facts that the employer had paid certain sums to the workmen and her own earning in the alternative employment and ordered

that “it would be fair and just to direct the appellant a substantial sum as compensation to her”. In *Utkal Machinery Ltd.* [1966 (I) LLJ 398] the amount of compensation equivalent to two years salary of the employee awarded by the industrial Tribunal was reduced by the Supreme Court to an amount equivalent to one year salary of the employee in view of the fact that she had been in service with the employer only for 5 months and also took into consideration the unusual manner of her appointment at the instance of the Chief Minister of the State. In *A.K.Roy* [1970 (I) LLJ 228] compensation equivalent to two years salary last drawn by the workmen was held to be fair and proper to meet the ends of justice. In *Anil Kumar Chakaraborty* [1962 (II) LLJ 483] the Court converted the award of reinstatement into compensation of a sum of Rs.50000 as just and fair compensation in full satisfaction of all his claims for wrongful dismissal from service. In *O.P.Bhandari* [1986 (II) LLJ 509], the Apex Court observed that it was a fit case for grant of compensation in view of reinstatement. The Court awarded compensation equivalent to 3.33 years salary as reasonable. In *M.K.Aggarwal* (1988 Lab.I.C.380), the Apex Court though confirmed the order of reinstatement yet restricted the back salary to 50% of what would otherwise be payable to the employee. In *Yashveer Singh* (1993 Lab.I.C.44) the court directed payment of Rs.75000 in view of reinstatement with back wages. In *Naval Kishor* [1984 (II) LLJ 473] the Apex Court observed that in view of the special circumstances of the case adequate compensation would be in the interest of the appellant. A sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In *Sant Raj* [1985 (II) LLJ 19] a sum of Rs.2 lac was awarded as compensation in lieu of reinstatement. In *Chandu Lal* (1985 Lab.I.C.1225) a compensation of Rs.2 lac by way of back wages in lieu of reinstatement was awarded. In *Ras Bihari* (1988 Lab.I.C.107) a compensation of Rs.65000 was granted in lieu of reinstatement, since the employee was gainfully employed elsewhere. In *V.V.Rao* (1991 Lab.I.C.1650) a compensation of Rs.2.50 lac was awarded in lieu of reinstatement.

37. In view of the facts that the claimants have worked with the Airlines continuously for a period of more than 240 days in a calendar year preceding the date of their disengagement, the period for which they have worked and legal impediment before the Airlines to continue with their engagement as well as their young age, I am of the view that the claimants who had worked for 240 days or more in one calendar year shall get an amount of Rs.25000 each, the claimants who had rendered more than 240 days service in each consecutive two calendar years or any part thereof in excess of six months will get an amount of Rs.40,000 each and the claimants who had rendered more than 240 days continuous service in each consecutive three years or any part thereof in excess of six months will get an amount of Rs.55000 each as compensation. The amount of compensation shall be

reckoned in accordance with the period of continuous service of twelve, twenty four or thirty six months preceding the dates of their termination, as mentioned in para twenty eight supra. The amount of compensation shall be paid within thirty days of the date, when the award becomes enforceable. An award is, accordingly, passed. It be sent to the appropriate Government for publication.

Dr. R. K. YADAV, Presiding Officer

Dated : 9-7-2012

नई दिल्ली, 14 अगस्त, 2012

का.आ. 2822.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 5/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-2012 को प्राप्त हुआ था।

[सं. एल-12012/65/2008-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th August, 2012

S. O. 2822.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.5/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 14-8-2012.

[No. L-12012/65/2008-IR (B-1)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present: Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 5/2009

Date of Passing Award - 27th July, 2012

Between: 1. The Chief General Manager,
State Bank of India, LHO, Pt. J.N. Marg,
Bhubaneswar (Orissa)
2. The Branch Manager,
State Bank of India, G. Udayagiri,
ADB Branch, Po. G. Udaygiri, Orissa.

..... 1st Party-Management

(And)

Their workman Shri Hareram Behera,
At. Jhagadapata, Ps. Khajuriguda, Orissa
Dist. Kandhamal.

... 2nd Party-Workman

Appearances:

Shri P.K. Mohanty, : For the 1st Party-
Manager, Law. Management No. 1 and 2,

Shri Hareram Behera : For Himself
the 2nd Party-Workman.

AWARD

The present reference has been sent by the Government of India in the Ministry of Labour for adjudication of an industrial dispute existing between the employers in relation to the management of State Bank of India and their workman vide letter No. L-12012/65/2008-IR(B-1), dated 3-2-2009 exercising the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947.

2. The dispute so referred has been mentioned under the Schedule of the letter which reads as follows.

“Whether the action of the management of Chief General Manager, State Bank of India, Orissa Circle in terminating services of Sri Hareram Behera, ex-temporary messenger w.e.f 1990 without complying provisions as required under the I.D. Act, is legal and justified? To what relief is the concerned workman entitled?”

3. The 2nd Party-Workman has filed his statement of claim and alleged that he was selected on temporary messenger's post after an interview held at Phulbani branch of State Bank of India. He joined the Udayagiri Agriculture Branch in August, 1987 and worked there till January, 1988. Thereafter he was sent to Khajuripada Branch where he worked from February, 1988 to January, 1989. Thus he had worked for 179 days in the two branches as a temporary messenger. From August, 1989 to 1990 he was again engaged as daily wager at Khajuripada Branch. He was told by the Branch Manager of Khajuripada branch that temporary duty was over so he can work, but payment will be taken by another person. Although he was deceived but he managed to work for 78 days as a daily wager. In the year 1990 a new branch in Linepada was opened. So he was ordered to join that branch where he worked from 1990 to 1994 for 123 days on daily wages. Thus he had worked in Khajuripada and Linepada branches for 191 days on daily wages. After four years the State Bank of India invited him for an interview for appointment on permanent post. He was selected and listed at Sl. No. 12 in the panel, but he was not appointed. Therefore it has been prayed that he be appointed to the post.

4. The 1st Party-Management has stated in its written statement that the question of re-employment after the judgement of the Hon'ble High Court of Orissa as well as the Apex Court has reached its finality and has been set at rest. The present claim of re-employment after lapse of several years is a stale claim and is liable to be rejected. In terms of various settlements reached between the All India

State Bank of India Staff Federation and Management of the State Bank of India, panels of selected candidates were prepared, but they expired on 31-3-1997 and vacancies up to the year 1994 could be filled up and rest of the wait-listed candidates could not be absorbed. After that some of the wait listed candidates including the disputant filed Writ Applications before the Hon'ble High Court of Orissa for regularization of their services. The Hon'ble High Court vide its judgement dated 15-5-1998 delivered in the case of Abhimanyu Mandal-versus-State Bank of India dismissed all the Writ Applications and in the process the selection and appointment of messengers made pursuant to the settlement became legal and proper. The said judgement was challenged before the Hon'ble Supreme Court of India in S.L.P. No. 3038/1999, but the S.L.P. was dismissed vide order dated 16-7-1999 upholding the judgement of the Hon'ble High Court of Orissa. The disputant workman along with others had also filed another Writ Application bearing O.J.C. No. 6784/1995 in the Hon'ble High Court of Orissa wherein the 1st Party-Management was directed vide its judgement dated 13-11-2006 to consider the representation of the petitioners if they make any representation within a period of four months and pass order in accordance with law. The petitioners including the disputant workman submitted a joint representation dated 14-1-2006 before the Chief General Manager, State Bank of India, but their representation was rejected by a reasoned order dated 24-3-2007 after giving personal hearing to the petitioners and due consideration. It has been further submitted that the disputant workman was working temporarily on daily wage basis in exigencies. He had not worked continuously and uninterruptedly for 240 days. Each branch has a separate establishment. It is not a fact that the Branch Manager Khajuripada branch told the disputant workman that temporary duty was over so he can work, but another person will take payment. The workman was well aware that his work being on daily wage basis would come to an end at the close of the day. The reference averring the termination of service in 1990 is not correct. Therefore the claim is liable to be rejected.

5. Following issues were framed on the pleadings of the parties:—

ISSUES

1. Whether the action of the Management of Chief General Manager, State Bank of India, Orissa Circle in terminating services of Shri Hareram Behera, ex-temporary Messenger w.e.f. 1990 without complying provisions as required under the I.D. Act is legal and justified.
2. Whether the disputant-workman is entitled for appointment on the ground stated in his statement of claim.
3. To what relief the concerned workman is entitled?
6. The 2nd Party-workman Shri Hareram Behera has

examined himself in evidence as W.W.-I and relied on documents marked as Ext-I to 11.

7. The 1st Party-Management has adduced the evidence of Shri Anirudha Behera as M.W.-I and relied on documents marked as Ext.-A to K.

FINDINGS

ISSUE NO.1

8. According to the oral statement of the 2nd Party-workman he was appointed as temporary messenger vide letter dated 7th August, 1987 marked as Ext.-3 at Udayagiri A.D.B. Branch and worked there from August, 1987 to January, 1988 for 154 days. Thereafter he was sent to Khajuripada branch where he served as temporary messenger for 25 days and for 33 days as daily wage from August, 1989 to 1990. He has filed Ext.-6 to 9 which are copies of certificates of temporary service rendered by the 2nd party-workman at Udayagiri Agricultural branch and Khajuripada branch. The management witness Shri Anirudha Behera has affirmed the period of service rendered by the 2nd Party-workman at G. Udayagiri A.D.B. branch in his evidence by filing Ext.-A to Ext.-E, but he has not stated anything about the service rendered by the 2nd Party-workman at Khajuripada branch. However Ext.-8 and Ext.-9 the original of which were issued by the Branch Manager, Khajuripada branch prove that the 2nd party-workman has rendered at least 25 days of service at Khajuripada branch in the year 1988. Further the 2nd Party-workman has stated that he has also worked for 33 and 45 days from the period from August, 1989 to 1990 on daily wage basis. Thereafter a new branch was opened at Linepada in the year 1990 where he worked for 123 days during a period of five months. Thus he worked for 179 days as a temporary messenger and for 201 days as daily wage worker. But the 2nd Party-workman has not filed any documentary evidence in support of his later contention of having worked for 201 days on daily wage basis. His whole span of service runs from the year 1987 to 1990 according to his statement on oath, but in his statement of claim he has stated otherwise by saying that he worked on daily wages basis from 1990 to 1994. Taking his version as true, for argument sake, he has rendered total service under the 1st Party-Management for 179 and 201 days starting from the year 1987 to 1990, but this does not entitle him to be reinstated or reappointed on the post earlier held by him. The contention of the 1st Party-Management is that the 2nd Party-workman was appointed for a specific period as a temporary messenger and with the expiry of that period his services stood terminated. According to the 2nd Party-workman he lastly worked in the year 1994, but the date and month have not been disclosed either in the statement of claim or in statement on oath before the Tribunal. To cover up the case for providing protection under Section 25-F of the Industrial Disputes Act the 2nd Party-workman would have worked continuously and uninterruptedly for a period of one year, that means at

least for 240 days during a period of 12 calendar months preceding the date of his alleged termination. But it has neither been mentioned in the statement of claim nor in the statement made on oath by the 2nd Party-workman. Rather he has admitted in his cross examination that "in the G. Udayagiri Branch I had not worked for 240 days work". He has further admitted in his cross examination that "I have not worked 240 days at Khajuripada branch of the State Bank of India". Thus it is established that the 2nd Party-workman has not rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his alleged termination.

9. It is also a point of dispute whether the discontinuance of service of the 2nd Party-workman can be treated as termination when according to the 1st Party-Management he was appointed for a specific period of one month vide Ext.-A to Ext.-E. In Ext.-A it has been clearly mentioned under the term that "the employment unless by written order extended or terminated earlier, shall come to an end on the expiry of the aforesaid period i.e. with the close of business on 19-9-1987". It is true that this period was extended from time to time till 20-1-1988 but the total period of service rendered by the 2nd Party-workman at Agricultural branch, G. Udayagiri comes to only 154 days. Except for another 25 days service at Khajuripada Branch no documentary or reliable evidence has been adduced to prove rendition of service in the year 1989 to 1990 or 1994. Therefore the action of the management of Chief General Manager, State Bank of India, Orissa circle in terminating the services of Sri Hareram Behera, ex-temporary messenger with effect from 1990 without complying provisions as required under the Industrial Disputes Act cannot be held illegal and unjustified. In the case of State of Karnataka-Versus- Uma Devi the Hon'ble Supreme Court has held that the temporary, casual or daily wagers have no right to the post.

10. In view of the above discussions the Issue No. 1 is decided in favour of the 1st Party-Management and against the 2nd Party-workman.

ISSUE NO. 2

11. As the disputant workman has no right and title under the law for fresh appointment as temporary or daily wage messenger under the 1st Party-Management he cannot be said to be entitled for re-appointment on the post. His assertions made in the statement of claim regarding absorption against permanent post of messenger clearly shows that he was called for interview by the Management in the year 1994 and he was empanelled in the panels prepared for absorption, but all the panels expired on 31-3-1997 and he cannot be absorbed. The matter was agitated up to the Hon'ble Supreme Court, but the case of the aggrieved parties i.e. the wait-listed candidates (petitioner) were rejected. Hence the matter has reached

finality and it cannot be re-agitated. This issue is also decided against the 2nd Party-workman.

ISSUE NO. 3

12. From the conclusions arrived at above the 2nd Party-workman is held not entitled to any relief.

13. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 14 अगस्त, 2012

का.आ. 2823.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, धनबाद के पंचाट (संदर्भ संख्या 59/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 7-8-2012 को प्राप्त हुआ था।

[सं. एल-12011/30/2009-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th August, 2012

S. O. 2823.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 59/2009) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 7-8-2012.

[No. L-12011/30/2009-IR (B-1)]

RAMESH SINGH, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-NO. 1, DHANBAD

In the matter of a reference U/s. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 59 of 2009

Parties: Employers in relation to the management of State Bank of India, Region-I.

and

Their workmen.

Present: Shri H.M. Singh,
Presiding Officer.

Appearances:

For the Employers : Shri N. Prasad, Br. Manager

For the workman : Shri N.N. Choudhary,
Authorised Representative.

State: Bihar Industry: Bank.

Dated, the 29-6-2012.

AWARD

By Order No. L-12011/30/2009-IR(B-I) dated 26-10-09 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal:

“Whether the action of the management of State Bank of India, Bhagalpur in depriving the functional allowance to Sri Ratan Kumar Sah, Senior Assistant and not allowing him to go on voluntary retirement is legal and justified? if not, to what relief the workman concerned is entitled?”

2. The case of the concerned workman is that he has been illegally and arbitrarily deprived of by the incompetent and unauthorised authorities of the bank from the functional allowance of Rs. 1075 and Rs. 1800 and other benefits payable thereon to the workman for the post of Senior Assistant w.e.f. 15-5-2004 and onward on which he has been appointed by the competent and legal authority, the Assistant General Manager, Sri L.K.P. Singh of State Bank of India, Region-I vide order contained in the letter No.GEN/165 dated 29-4-2004. The management has been taking work of the Senior Asstt. from the workman from 15-5-2004 to 6-8-2004 at B/O Asarganj and from 6-8-2004 to 7-1-2006 at B/O Amarpur thereafter from 8-1-2006 and onwards at B/o Asarganj continuously but the management refused to make payment of functional allowance Rs. 1075 with other benefits thereon from 15-4-2004 to 30-6-2005 and Rs. 1800 with other benefits from 1-7-2005 and onward arbitrarily, illegally and thus victimised the workman. The workman is entitled to get functional allowance mentioned above from 15-5-04 to 31-12-09 for the post of Senior Assistant and 20% interest thereon besides Rs. 1,25,000 as compensation for mental torture and victimization and Rs. 25,000 as litigation cost. By suppressing and removing the application of the workman from record by the management at branch level and at Zonal office level the workman has been denied voluntary retirement on and from 31-1-07/31-3-07 causing irreparable prejudice amounting to victimization of the workman for which the bank management is liable to pay compensation of Rs. 5 lacs to the workman. The concerned workman performed the job of the Senior Asstt. at B/o Asarganj from 15-5-2004 to 6-8-2004. The branch manager of B/o Asarganj paid functional allowances of Rs. 1075 and other allowances and benefits to the workman upto 6-8-2004. When he was transferred to Amarpur branch he joined thereafter 6-8-2004. The Branch Manager B/o Amarpur allotted duties of Senior Asstt. to the workman from August, 2004 to 7-1-2006 which was performed by him continuously. When the workman made demand for payment of functional allowance from the branch B/o Amarpur, he refused to pay the same to the workman vide his letter dated 18-5-2005 meanwhile the branch manager

of B/o Asarganj recovered on 1-9-04 the functional allowance Rs. 1075 and other benefits thereon paid to the workman from 15-5-04 to 6-8-04 for his appointment as Senior Asstt. made by the General Manager, Region-I vide his order dated 29-4-04 without any notice to the workman causing prejudice to the workman. It has been submitted that since 15-5-2004 to 6-8-2004 the Branch Manager of B/o Asarganj and thereafter the Branch Manager of B/o Amarpur after 6-8-2004 to 7-1-2006 and thereafter from 8-1-2006 and upto now the Branch Manager of B/o Asarganj took work of Senior Asstt. from the workman but did not pay functional allowance to him at the rate Rs. 1075 and other benefits thereon upto 30-6-30-6-05 and thereafter enhanced functional allowance rate Rs. 1800 and other benefits from 1-7-2005. Thus the management of State Bank of India deprived the workman from functional allowance and victimised the workman for which he is legally and lawfully entitled to get by virtue of his irrevocable appointment as Senior Asstt. on and from 15-5-04 vide order dated 29-4-04 by the competent Authority.

The concerned workman submitted an application for grant of voluntary retirement from service of S.B.I. under Exit Option Scheme to the Branch Manager, B/o Asarganj on 6-10-2006 which was forwarded to Bhagalpur and again he made application on 14-10-2006 opting for retirement on and from 31-3-2007, but the same was rejected by Bank.

It has been submitted that the action of the management in denying functional allowance for the post of Senior Asstt. to the workman from 15-5-2004 and onward is not justified. It has also been submitted that the action of the management in denying voluntary retirement to the workman on 31-1-2007/31-3-2007 is also not justified.

Accordingly, it has been prayed before the Hon'ble Tribunal to pass an award in favour of the workman.

3. The case of the management is that as per the Bank's existing guidelines the employees who are promoted from subordinate cadre to Record Keeper/Cashier has no right either to claim for transfer as Clerk to the accounts wing or for in cadre higher appointment either on officiating or permanent basis or for out of promotion either on officiating or permanent basis, Ratan Kumar Sah, who was originally appointed in subordinate cadre and later on was promoted as Cashier (non-matric) is not eligible to become senior assistant position or even to be considered therefore. It is fair to state on the part of the Bank that Sri Sah was given the position of Senior Assistant by letter dated 29-4-2004 and when the said mistake/error was detected, the management of the Bank had lawfully corrected the said mistake and also communicated the same to Sri Sah by memo dated 18-5-2005. The Bank has never taken the work of Senior Assistant from Sri Ratan Kumar Sah during his stay at Amarpur Branch he himself admitted that he an Asstt. but not Senior Asstt. when he was deputed

for training to Staff Training Center, Patna, Sri Sah was paid the allowance for the months June and July, 2004 and later on withdrawal of the same when the error/mistake was corrected. Sri Ratan Kumar Sah submitted an application dated 14-12-2007 seeking release from Bank on 31-7-2007 and the said application was forwarded to the competent authority, which in turn turned down for the reason that Sri Sah could not get his unauthorised over drawn leave of 38 months and 3 days condoned (on less of pay) upto the date of his application under Exit Option Scheme. Further, he never submitted any cogent and sufficient reason for his unauthorised leave and also failed to take any step to get it condoned. Thus, he was not entitled to get any benefit from the said Exit Option Scheme. It has also been submitted that the concerned workman joined the service of the Bank in the subordinate cadre and does not possess the educational qualification of matric as such he was entitled only to be promoted to the post of cashier and the employee so promoted shall not have any right to claim for the post of Senior Assistant. He was not entitled to become Senior Assistant. Any equivalent degree was not acceptable.

4. Both the parties have filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The management produced MW-1, Sukumar Ghosh, and proved documents as Exts. M-1 to M-8.

The concerned workman produced himself as W-W-1 and proved documents as Exts. W-1 to W-12.

6. Main argument advised as behalf of the concerned workman is that he was seeking voluntary retirement from bank service, but at the time of argument this point has not been pressed, so his claim for voluntary retirement was waived. Regarding functional allowance it has been argued that he was appointed with the Bank as messenger at Bhagalpur City Branch and posted as cashier on 6-2-1988, as per Ext. W-1, Thereafter he was transferred to Lakhisarai branch on 4-10-1988, as per Ext. W-2. Then he was transferred to Asarganj as Cashier vide order dated 31-8-1996, as per Exts. W-3 and W-3(a). The concerned workman performed the duties of cashier at Barari, Lakhisarai and Asarganj till 14-5-2004 respectively and not the job of record keeper. He was paid salary for the job of cashier as per Exts. W-4 and W-5. He was appointed by the Assitt. General Manager, Zonal Office, Bhagalpur, vide Ext. W-6 which proves that he was offered the post of the Senior Assistant w.e.f. 15-5-2004 and the concerned workman accepted the same. The concerned workman was transferred to Amarpur Branch as Senior Assistant, as per Ext. W-4. He was illegally denied the functional allowance to the concerned workman for the post of Senior Assistant w.e.f. 15-5-2004 by the Branch Manager, Amarpur Branch and the management refused to make payment of functional allowance Rs. 1075 with other benefits thereon from 15-5-2004 to 30-6-2005 and Rs. 1800 with other benefits thereon from 1-7-2005 and onward. He

is entitled to get functional allowance from 15-5-2004 to 31-12-2009 for the post of Senior Assitt. and 20 % interest thereon besides Rs. 1,25,000 as compensation for the mental torture and Rs. 25,000 as litigation cost.

7. In this respect management's witness MW-1, Sukumar Ghosh, stated in his cross-examination at page 2 that there is no mention of record keeper-cum-cashier. In salary chart Ext. W-5 record keeper word is not mentioned. In Ext. W-7 nor record keeper is mentioned. The A.G. M. is competent to give promotion to an employee.

8. The management representative argued that he has been wrongly promoted as Senior Assistant vide letter dated 29-4-2004 and when the said mistake was detected, the management of the Bank had corrected the said mistake. Withdrawal or correction of mistake is within the legal right of the bank.

As per Ext. W-1 the management representative argued that on 12-8-2005 the concerned workman has been found not eligible to become Senior Assistant and as such the letter earlier given to him may be treated as withdrawn regarding career progression staff award/subordinate. This letter has been written by A.G.M., Zonal Office, Region-I, but in this respect no notice has been given to the concerned workman by the management.

9. Considering the above facts and circumstances I came to the conclusion that the action of the management of State Bank of India, Bhagalpur in depriving the functional allowance to Sri Ratan Kumar Sah, Senior Assistant, is not legal and justified. Accordingly, I hold that the concerned workman is entitled to get functional allowance from 15-5-2004 @ Rs. 1075 per month from the date of his appointment and Rs. 1800 per month with other benefits from 1-7-2005 till his superannuation. The management is directed to implement the award within 30 days from the date of publication of the award in the Gazette of India.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 14 अगस्त, 2012

का.आ. 2824.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, भुवनेश्वर के पंचाट (संदर्भ संख्या 29/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14-8-2012 को प्राप्त हुआ था।

[सं. एल-12012/16/2008-आई आर (बी-1)]

रमेश सिंह, डेस्क अधिकारी

New Delhi, the 14th August, 2012

S. O. 2824.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref.29/2008) of the Cent. Govt.Indus. Tribunal-cum-Labour Court Bhubaneswar as shown in the Annexure, in the industrial dispute between the management of State Bank of India, and their workmen, received by the Central Government on 14-8-2012.

[No. L-12012/16/2008-IR (B-I)]

RAMESH SINGH, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

Present: Shri J. Srivastava,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 29/2008

Date of Passing Award - 6th August, 2012

Between: 1. The Asst. General Manager,
State Bank of India,
Bhubaneswar Main Branch,
Bhubaneswar, Dist. Khurda, (Orissa)
Bhubaneswar (Orissa)

..... 1st Party-Management.

(And)

Their workman Shri Sukanta Kumar Sutar,
Qr. No. VR-5/1, Kharvela Nagar, Unit-3,
Bhubaneswar, (Orissa)

... 2nd Party-Workman.

Appearances:

Shri Alok Das, : For the 1st Party-
Authorized Representative. Management

None. : For the 2nd Party-
Workman.

AWARD

The Government of India in the Ministry of Labour has referred the present dispute existing between the employers in relation to the Management of State Bank of India and their workman under clause (d) of sub-section (I) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 vide Letter No. L-120 12/16/2008 - IR (B-I), dated 2-6-2008 to this Tribunal for adjudication to the following effect :

“Whether the action of the management of State Bank of India, in relation to their Main Branch, Bhubaneswar in terminating the services of Sri Sukanta Kumar Sutar w.e.f. 30-9-2004 is legal and justified? To what relief is the workman concerned entitled?”

The 2nd Party-Workman has filed his statement of claim alleging that he had joined his services as a

Messenger in July, 1988 after succeeding in interview. He was assured to get permanent appointment order after one year or on completion of 240 days' work in a calendar year, but despite completion of several years of continuous satisfactory service and putting in more than 240 days' work in each year he was not regularized, instead terminated and refused employment from 30-9-2004 by the 1st Party-Management without any written communication or payment of compensation. The 1st Party-Management in refusing employment to him violated all principles of natural justice and mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. He therefore brought the matter into the notice of the C.G.M. and C.D.O. of the State Bank of India, L.H.O., Bhubaneswar. But on hearing nothing, he raised an industrial dispute before the Regional Labour Commissioner (Central) vide his letter dated 2-3-2005. Conciliation proceedings were started, but they failed and thereupon a failure report was submitted to the Government and the Government made the present reference. He is thus entitled to get full back wages and reinstatement with continuity of service with effect from 30-9-2004.

3. The 1st Party-Management in its reply through written statement has stated that the present dispute is misleading and misconceived in as much as the 2nd Party-workman had already raised a similar dispute along with 124 other workers through the State Bank of India Temporary 4th Grade Employees Union before the Assistant Labour Commissioner (Central), Bhubaneswar challenging their alleged termination of service by the 1st Party-Management. In the said dispute the failure report was sent by the Asst. Labour Commissioner (Central), Bhubaneswar to the Ministry of Labour who in turn referred the matter to this Tribunal for adjudication and the same is pending before this Tribunal being I.D. Case No. 7/2007. The name of the 2nd Party-workman is appearing at Sl. No. 64 in Annexure-A to the said reference. Thus, raising a common dispute for same cause of action and again raising individual dispute for same relief is nothing but an abuse of the process of law and amounts to multiplicity of litigation. The Asst. Labour Commissioner (Central) while conciliating the individual disputes disregarded the direction of the Deputy Chief Labour Commissioner (Central) not to take any further action on the separate disputes raised by the same workers for the same cause of action. The allegation of the 2nd Party-workman that he had joined the Bank in July, 1988 and he was discontinued from service on 30-9-2004 is not correct. It is also not correct that he was signing bogus voucher. He was engaged intermittently on temporary/daily wage basis due to exigencies of work. It is further denied that he was performing his duties with all sincerity and honesty and to the best of satisfaction of the Authority. The 2nd Party-workman has neither completed several years of continuous service in the Bank nor he has completed 240 days of continuous service in any calendar year preceding the date of his alleged termination. In order to give an opportunity

for permanent absorption to the ex-temporary employees/daily wagers in the Bank in view of the various settlements entered into between the All India State Bank of India Staff Federation and the Management of the State Bank of India all eligible persons including the 2nd party-workman were called for interview in the year 1993. As he did not succeed in the interview, he could not be appointed in the Bank. The Union or the 2nd Party-workman has never challenged the implementation of the settlement which has now gained finality. It is further submitted that some of the wait-listed candidates, who could not be absorbed in the Bank's service due to expiry of the panel on 31st March, 1997 filed Writ Petitions before the Hon'ble High Court of Orissa. But the Hon'ble High Court of Orissa by a common order dated 15-5-1998 passed in O.J.C. No. 2787/1997 dismissed a batch of Writ Petitions and upheld the action of the Management of the Bank. This order of the Hon'ble High Court was also upheld by the Hon'ble Supreme Court of India in S.L.P. No. CC-3082/1999. Hence the above matter has attained finality and cannot be re-agitated. Since the services of Sri Sutar were discontinued much earlier to 30-9-2004 i.e. in May, 1990 his claim has become stale by raising the dispute after 15 years. It is a settled principle of law that delay destroys the right to remedy. Thus the present dispute is liable to be rejected on the above grounds.

4. On the pleadings of the parties following issues were framed:—

ISSUES

1. Whether the present reference of the individual workman during the pendency of the I. D. Case No. 7/2007 before this Tribunal on the same issue is legal and justified?
2. Whether the workman has worked for more than 240 days as required under Section 25-F of the Industrial Disputes Act?
3. Whether the action of the Management of State Bank of India, Main Branch, Bhubaneswar in terminating the services of Shri Sukanta Kumar Sutar, w.e.f 30-9-2004 is, fair, legal and justified?
4. To what relief is the workman concerned entitled?
5. The 2nd Party-workman despite giving sufficient opportunity did not produce any evidence either oral or documentary in support of his claim and willingly kept himself out of the proceedings at the stage of evidence by absenting himself or his Union representative.
6. The 1st Party-Management has adduced the oral evidence of Shri Abhay Kumar Das as M.W.-I and filed documents marked as Ext.-A to Exr-J in refutation of the claim of the 2nd Party-workman.

FINDINGS

ISSUE NO.1

7. A specific plea has been raised by the 1st Party-Management that a group of 125 employees including the 2nd Party-workman had already raised a similar dispute in

I.D. Case No. 7/2007 before this Tribunal for the same relief which is pending for adjudication. The dispute as referred to in I.D. Case No. 7/2007 is given below for comparison with the dispute in the present case—

Whether the action of the Management of State Bank of India, Orissa Circle, Bhubaneswar in not considering the case of 125 workmen whose details are in Annexure-A for re-employment as per Section 25(H) of Industrial Disputes Act, 1947 is legal and justified? If not, what relief the workmen are entitled to?

8. The name of the 2nd party-workman appears at Sl. No. 64 in Annexure-A to the above reference. In both the cases the matter of disengagement or so called retrenchment is involved to be considered in one or the other way and the relief claimed is with regard to re-employment. But challenge has been made more specifically against the termination of service of the 2nd Party-workman in the present case while in I.D. Case No. 7/2007 prayer has been made with regard to consideration of the case of 125 workmen for re-employment as per Section 25-H of the Industrial Disputes Act, 1947. In fact, in the latter case the workmen have submitted or virtually surrendered to their cessation, of employment or alleged termination, whereas in the present case they have challenged their termination on facts and law. Virtually in the present case validity and legality of the alleged termination has to be tested at the alter of facts and legal propositions. Therefore it cannot be said that the issues involved in both the cases are same. This case can proceed despite pendency of I.D. Case No. 7/2007 and the present reference by the individual workman pending for adjudication is maintainable being legal and justified. This issue is therefore decided in the affirmative and against the 1st Party-Management.

ISSUE NO.2

9. The onus to prove that the 2nd Party-workman has completed one year or 240 days of continuous service during a period of 12 calendar months preceding the date of his alleged termination or disengagement from service lies on him, but the 2nd Party-workman has not adduced any evidence either oral or documentary in support of his contention. He has only alleged in his statement of claim that he had joined the service in July, 1988 and worked till 30-9-2004 on temporary/casual/daily wage basis, but he has not filed any certificate or reliable document showing the break-up of year-wise service rendered by him under the 1st Party-Management during the above period. The 1st Party-Management, on the other hand, has alleged that the 2nd Party-workman was engaged intermittently on temporary/daily wage basis due to exigencies of work and he had never completed 240 days continuous service in a calendar year. M.W.-I Shri Abhaya Kumar Das in his statement before the Court has stated that "the disputant was working intermittently for few days in our Branch on daily wage basis in exigencies He had not completed

240 days of continuous and uninterrupted service preceding the alleged date of the termination". He has denied the allegation that the workman was discontinued from service with effect from 30-9-2004, but has stated that "In fact the workman left working in the Branch since May, 1990": The 2nd Party-workman has to disprove the evidence led by the 1st Party-Management, but he has not come before the Court to give evidence. A temporary or daily wage worker has no right to claim reinstatement and particularly when such an employee had not worked for 240 days continuously during a period of 12 calendar months preceding the date of his so-called termination. Thus he is not entitled to get benefit of Section 25-F of the Industrial Disputes Act, 1947. This issue is hereby decided against the 2nd Party-workman for failing to prove that he had worked for 240 days continuously during a period of 12 calendar months preceding the date of his disengagement or alleged termination from service.

ISSUE NO. 3

10. Since the 2nd Party-workman could not prove that he had rendered 240 days continuous service under the 1st Party-Management during a period of 12 calendar months preceding the date of his disengagement or alleged termination, he is not entitled for re-employment even in case of his alleged illegal and arbitrary termination. Moreover, he was a temporary/casual/daily wage employee. His services can be terminated at any time without assigning any cause by the 1st Party-Management. He has no legal right to be retained in service for the extended period, if he was appointed for a certain period or when no time is specified. The 2nd Party-workman has not filed any letter of appointment or proof of having rendered service under the 1st Party-Management for a specified period against a regular post. The 1st Party-Management has further alleged that in time of exigencies only the 2nd Party-workman was employed. It means that with the end of exigencies his job also came to an end. In view of the matter the action of the management of State Bank of India, Bhubaneswar Main Branch in terminating the services of Sri Sukanta Kumar Sutar with effect from the alleged date of his termination is fair, legal and justified. This issue is accordingly decided in the affirmative and against the 2nd Party-workman.

ISSUE NO. 4

11. In view of the findings recorded above under Issue Nos. 2 and 3, the 2nd Party-workman is not entitled to any relief whatsoever claimed.

12. Reference is answered accordingly.

JITENDRA SRIVASTAVA, Presiding Officer

नई दिल्ली, 16 अगस्त, 2012

का.आ. 2825.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच,

अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ग्राम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 310/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/468/97-आई आर (सी- II)]

बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 16th August, 2012

S.O. 2825.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 310/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 16-8-2012.

[No. L-22012/468/97-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/310/97

PRESIDING OFFICER : SHRI MOHD. SHAKIR HASAN

Secretary,
M.P.Koyla Mazdoor Sabha (HMS),
Bhadra Branch, Qr.No.D/95,
Mines Colony, Jamuna,
Post Jamuna colliery,
Distt. Shahdol (MP)

...Workman

Versus

Sub Area Manager,
Bhadra Sub Area of SECL,
Post Bhadra,
Distt. Shahdol (MP)

...Management

AWARD

Passed on this 27th day of July, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-22012/468/97-IR(C-II) dated 12-11-97 has referred the following dispute for adjudication by this tribunal :—

"Whether the action of the Sub Area Manager, Bhadra Sub Area of SECL, Jamuna Kotma Areas in taking clerical work from Shri B. K. Mitra S/o Shri B.K. Mitra who was initially appointed as General Mazdoor Cat-I and after a lapse of more than three years time forcing him to perform manual work of lamp cleaning mazdoor category is legal and justified? If not, to what relief is the workman entitled?"

2. The case of the Union/workman in short is that the workman Shri B.K.Mitra was appointed as General Mazdoor Category-I on 25-12-1990 in the Kotma West Colliery, SECL. He was promoted in Timber Helper Cat-II from 1-1-1992 and was transferred on 28-11-92 in the Harrad Incline in SECL where he was given the work of clerk Grade-III in Magazine and Pit Store. He had requisite qualification for the post of clerk but the management had not regularized the services of the workman in clerical Grade whereas similarly situated persons had been regularized on the post of clerk. The workman gave several representations to the management but they did not consider his representations. It is submitted that the workman be regularized on the post of clerk.

3. The management appeared and filed Written Statement. The case of the management, inter alia, is that the workman was initially appointed as General Mazdoor Cat-I on 25-12-90 and posted at Kotma West Colliery. He was promoted to the post of Timber Helper Cat-II on 1-1-92 and was transferred to Harrad Incline of Bharda sub Area from 28-11-92. He was posted in Store/Magazine department as General Mazdoor. He never worked as a clerk nor wages of clerk was paid. While he was posted in Magazine deptt., he was given the job of magazine Mazdoor Cat-II/Lamp cleaning mazdoor. Both, posts are equal. There is a cadre scheme for considering to the post of clerk and there is mode of selection to the post of clerk. The claim of the workman is illegal and contrary to the cadre scheme. It is submitted that the workman is not entitled to be regularized in the post of clerk.

4. On the basis of the pleadings of the parties, the following issues are settled for adjudication—

I. Whether the action of the management by forcing the workman to perform manual work of lamp cleaning mazdoor category after taking work of clerk for three years is legal and justified?

II. To what relief the workman is entitled?

5. Issue No. I

It is evident from the pleadings of the parties that the following facts are admitted in the case.

I. The workman Shri B.K.Mitra was appointed as a General Mazdoor, Cat-I on 25-12-1990 in Kotma West Colliery of SECL.

II. He was promoted to the post of Timber Helper Cat-II on 1-1-1992.

III. He was transferred to Harrad Incline in SECL on 28-11-1992.

IV. He was posted in Store/Magazine deptt.

6. Now the important question is as to whether the workman was transferred to work in Clerk Grade-III in Magazine and Store dept. as has been claimed. According

to the Union/workman, he was transferred in the Harrad Incline where he was given the work of Clerk Grade-III in Magazine and Store Section. Whereas the management has contended that he had never worked as a clerk. While he was posted in Magazine deptt., he was given the job of Magazine Mazdoor Cat-II/Lamp cleaning Mazdoor.

7. Now the evidence is to be examined in order to determine the point for consideration. The workman Shri B.K. Mitra is examined in the case. Initially he has supported his case. In cross-examination he has stated that he was appointed as General Mazdoor Cat-I. His designation on the surface was of lamp cleaning mazdoor. He has stated that there is Store Mazdoor in the store section and is designated as Store Mazdoor Cat-II. He was never selected or promoted on the post of clerk. He has further stated that he got order of Head of the department for working as clerk in the year 1993. The said order is not filed in the case which is a very important piece of evidence to prove that the workman was working in the Magazine and Store Section on the post of clerk. When there is a claim of existence of a documentary evidence on the fact-in-issue and the same is in possession of the workman, the non-production the same in Court falsify his claim. His evidence cannot be relied in absence of the said documentary evidence. Thus his evidence shows that he had a false claim that he worked as a clerk in the Magazine and Store Deptt.

8. On the other hand, the management has examined two witnesses. The management witness Shri C. Kerketta is working as Dy. Personnel Manager in Bhadra Sub Area. He has stated that he was posted in Jamuna Kotma Area in the year 2005. He cannot say that what work the workman was doing in the year 1992. This shows that this witness is not competent to say that as to whether the workman was working as a clerk in Magazine and Store deptt. in the year 1992 and onwards. Another management witness Shri G.T.Kurup was working as Personnel Officer at Jamuna Kotma Area from Feb, 1994 to June, 2000. He has supported the case of the management. He has denied that any order was given to the workman to work as a clerk. He has specifically stated at para-13 that the workman had never worked as clerk Gr.III. There is nothing to disbelieve the evidence of this witness. He was cross-examined at length and he stood the test of cross-examination. His evidence clearly shows that he had never worked as a clerk in the Magazine and Store deptt. as has been claimed by the Union/workman. This witness has further stated in para-14 that Shri Mitra was working as Store Mazdoor and thereafter he was lamp cleaning mazdoor. This fact clearly shows that the workman was not forced to do manual work of lamp cleaning mazdoor, rather he was placed in the said cadre after surface duty on transfer from Kotma colliery to Harrad Incline. Thus the evidence of the management shows that the action of the management is legal and justified. This issue is decided against the workman and in favour of the management.

9. Issue No. II

On the basis of the discussion made above, it is clear that the workman is not entitled to any relief. The reference is, accordingly, answered.

10. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 16 अगस्त, 2012

का.अ. 2826.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.जी.डब्ल्यू.बी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के मंचाट (संदर्भ संख्या 100/01) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-8-2012 को प्राप्त हुआ था।

[सं. एल-42012/10/2000-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 16th August, 2012

S.O. 2826.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 100/01) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of CGWB and their workman, which was received by the Central Government on 16-8-2012.

[No. L-42012/10/2000-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

No. CGIT/LC/R/100/01

PRESIDING OFFICER : SHRI MOHD. SHAKIR HASAN

Shri P. S. Rao,
C/o Shri P. R. S. Swamy,
Type II, 109/3,
WRS Colony,
Raipur (MP)

... Workman

Versus

The Regional Director,
Central Ground Water Board,
Ministry of Water Resources,
North Central Chhattisgarh Region,
R-16, Anupam Nagar,
Raipur (MP)

... Management

AWARD

Passed on this 25th day of July, 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-42012/10/2000-IR (C-II) dated 30-5-2001 has referred the following dispute for adjudication by this tribunal:-

"Whether the termination of service of Shri P. S. Rao ex-employee of Central Ground Water Board, Raipur by the management of Central Ground Water Board under Ministry of Water Resources verbally w.e.f. 1-8-1995 is legal and justified? If not, to what relief he is entitled to?"

2. The case of the workman, in short is that he was employed as contingent employee on 22-3-1992 in Central Ground Water Board (in short CGWB), at Raipur Unit Office and was doing work of maintaining dispatch register, typing work and other jobs entrusted by the superiors. He worked continuously till 31-7-95 when he was abruptly verbally terminated on 1-8-1995 without giving any notice or retrenchment compensation under the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). Other casual/contingent labourers were regularized and were granted temporary status w.e.f. 1-9-1993 vide letter dated 22-1-1998. He gave representations on 23-11-1998 and 28-5-1999 to Raipur as well as Faridabad office. He received reply that his services as contingent/casual worker was discontinued on 5-8-1995 as such his case is not fit for temporary status as well as for regular appointment. He is having unemployment and struggling for livelihood. Old parents are dependant on him. On the above grounds, it is submitted that the action of the Management is not justified and the workman be reinstated with full back wages.

3. The management appeared and filed Written Statement by way of affidavit on 15-3-2002. The case of the management, inter alia, is that the alleged workman was engaged verbally as a contingent workman w.e.f. 24-3-1992 instead of 22-3-1992 and worked till 31-7-1995 intermittently. He had never completed 240 days in a calendar year as per bills/vouchers of the workman. Since the engagement was purely on daily wages/need basis, the question of termination from service or serving any notice or payment of compensation does not arise. The provision of Section 25-F of the Act, 1947 is not attracted. The workman has not shown any documentary evidence that the CGWB is an industry. However the main activities of the CGWB are Survey and exploration by drilling of the ground water resources of the country which is a scientific department and therefore CGWB is not an industry as defined in the Act, 1947. It is submitted that reference be accordingly dismissed.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication-

I. Whether the termination of service of Shri P.S. Rao by the management w.e.f. 1-8-1995 is legal and justified?

II. To what relief the workman is entitled?

5. Issue No. I

In order to prove the case, the workman has adduced evidence in the case. The workman Shri P.S. Rao has supported his case in the evidence. He has stated that by typing mistake the date of appointment was wrongly mentioned as 22-3-1992 whereas the date of appointment as contingent worker was 24-3-92. This is also admitted by the management in his pleading. He has further stated that he worked till 31-7-95 intermittently. This fact is also admitted by the management in his pleading. He has further stated that the service was terminated without any notice or one month pay in lieu of notice and also not paid retrenchment compensation as required under Section 25-F of the Act, 1947. This fact is also admitted in the pleading by the management that no notice was issued or pay in lieu of notice or retrenchment compensation was paid as required under Section 25-F of the Act, 1947 because he never worked 240 days in a calendar year and the CGWB is not an Industry as such the Act, 1947 is not applicable. Thus the oral evidence clearly shows that most of the facts are admitted by the management.

6. Now the important question is as to whether the workman shall be deemed to be in continuous service for a period of one year during a period of twelve calendar months preceding the date with reference to which calculation is to be made under the provision of Section 25 B of the Act, 1947. To prove this fact, the workman has relied the statement filed by the management and is admitted by the workman which is marked as Exhibit M/1. In this statement the management has given the days of work done by the workman on monthwise. The statement shows that from August, 1994 to July, 1995, when the workman was terminated in twelve calendar months, the workman had worked 288 days. This itself shows that he worked more than 240 days in twelve calendar months preceding the date with termination to count one year continuous service under the provision of Section 25 (B)(2) of the Act, 1947. Thus it is clear that his service was in continuous service for one year and he was not admittedly given notice nor pay in lieu of notice nor paid any retrenchment compensation as required under section 25-F of the Act, 1947 and therefore the termination is not justified in view of the above provision.

7. Another point raised by the management in his pleading is that the CGWB does not come under the purview of the Act, 1947 and the above sections of the Act, 1947 are not attracted in the case. It is stated that the CGWB is not an Industry. The workman has stated in his evidence that this plea is not raised at the preliminary stage that the Act, 1947 is not applicable. However the workman

has filed an order dated 20-9-1999 of OA No.491/99 Vinod Kumar Sahu Vrs. Ministry of Water Resources and others passed by the Central Administrative Tribunal, Jabalpur wherein it was considered on the point of jurisdiction of the said Administrative Tribunal and it was held that the said Tribunal has no jurisdiction to entertain such matters as they came under the purview of the Industrial Dispute Act, 1947. Thus it is clear that this Tribunal has jurisdiction and there is a clear violation of the Act, 1947 in terminating the services of the workman and it was raised by the management earlier and it was decided that it comes under the definition of Industry.

8. The management has filed affidavit of the evidence of a witness but the said witness did not turn up for cross-examination. As such the veracity of witness is not tested by the workman and therefore the evidence of this witness is of no use to the management. His evidence is not fit to be considered in the case. Thus as discussed above, it is evident that there is a violation of the provision of the Act, 1947 in terminating the service of the workman by the management. This issue is decided in favour of the workman and against the management.

9. Issue No. II

According to the workman, he is facing unemployment and is struggling for livelihood and his old aged parents are also depending on him. The management has neither denied this fact nor there is pleading that the workman is in a gainful employment. Thus it is clear that the workman is not in a gainful employment. It is evident that the management was not justified in terminating the services of the workman w.e.f. 1-8-1995. Therefore the management is directed to reinstate the workman with full back wages. The reference is, accordingly, answered.

10. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 16 अगस्त, 2012

का.आ. 2827.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) को धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नागपुर के पंचाट (संदर्भ संख्या 37/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/391/1996-आई आर (सी- II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 16th August, 2012

S.O. 2827.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award (Ref. No. 37/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of FCI and their workman, which was received by the Central Government on 16-8-2012.

[No. L-22012/391/1996-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, NAGPUR

No. CGIT/NGP/37/2001

DIARY

In the interest of justice, I think it is proper to give a last chance to the petitioner to cross-examine the witness for the management. Hence on 3-8-2012 for the cross-examination of the witness for the management as a last chance.

Sd.

Representatives for both the parties are present. Representatives for both the parties file separate applications to close the case in view of the amicable settlement entered into by the parties. Copy of the respective application has been served on each other. Heard, it is found from the applications that the management has agreed to pay the amount deducted from the salary of the workmen towards conveyance allowance. Hence, the applications are allowed. Put up later on for orders.

Presiding Officer

Party No. 1

The District Manager,
Food Corporation of India,
Ajni, Nagpur.

V/s

Party No. 2

The F.C.I. Employees
Association, C/o. FCI Ajni,
Nagpur.

AWARD

(Dated: 3rd August, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section. 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of FCI and their union, for adjudication as

per letter No.L-22012/391/96-IR (C-II) dated 30-09-1997 to CGIT-cum-Labour Court, Jabalpur for adjudication with the following schedule:-

"Whether, the action of the management of FCI, Nagpur in reducing, the amount of Conveyance Allowance payable to employees owning Moped w.e.f. July 1995 and in proposing to recover the excess payment of Conveyance Allowance made to such employees, is legal and justified? If not, to what reliefs are the workman entitled?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, parties were noticed to file their respective statement of claim and written statement, in response to which, the union, "F.C.I. Employees Association", ("the union" in short) filed the statement of claim, on behalf of the workmen ("the workmen" in short) stating that from the month of July 1995, the District Manager, FCI, Nagpur reduced the reimbursement of conveyance allowance having moped and such action was in violation of the law as before deduction of the conveyance allowance, the management did not issue any notice under section 9 A of the Act and as such, the workmen are entitled to payment of conveyance allowance as usual.

3. The management of FCI, ("party no. 1" in short) filed the written statement pleading inter-alia that payment of conveyance allowance was regulated as per circular dated 12-03-1991 issued by the Senior Regional Manager, FCI, Mumbai as well as in accordance with Head quarters' circular no. 15 of 1989 and the Senior Regional Manager, obtained classifications of two wheelers from the respective manufacturers and basing on such information issued circular dated 03-04-1995 and the District Manager, FCI, Nagpur obtained declarations from the employees in the prescribed format in respect of two wheelers owned and maintained by the workman and regulated the payment of reimbursement of conveyance allowance and as such, the workmen are not entitled to any relief.

4. During the pendency of reference i.e. 03-08-2012 the representatives of both the parties filed separate applications to close the case on the ground that the dispute has already amicably settled. As, there exists no industrial dispute between the parties, it is necessary to pass a "no dispute" award. Hence, it is ordered:-

ORDER

The reference may be treated as "no dispute" award. The applications filed by the parties dated 03-08-2012 are made part of the award.

J. P. CHAND, Presiding Officer

**BEFORE THE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, NAGPUR.**

REFERENCE NUMBER

CASE NO. CGIT/NGP/37/2001

APPLICANT

SECRETARY,
FCIEA (NOW BKNK SANGH), NAGPUR

NON APPLICANT

DISTRICT MANAGER (NOW AREA MANAGER),
F.C.I. DISTRICT OFFICE, AJNI, NAGPUR-440015

SUBJECT :- Application for Clousure of the Case

The Applicant most respectfully submits as follows :-

1. That the said Case is fixed on 3-8-2012 for cross examination of the representative of the Management.
2. That the Applicant humbly submit that an amicable settlement has been derived with the Management in this case.
3. Accordingly the Applicant Union plead not to contest further and withdraw the case.

Prayer

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to close the Case.

Place Nagpur
Date: 03-08-2012

APPLICANT/SECRETARY
FCIEA (NOW BKNK SANGH)
NAGPUR

**BEFORE THE PRESIDING OFFICER, CENTRAL
GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, NAGPUR**

REFERENCE NUMBER

CASE NO. CGIT/NGP/37/2001

APPLICANT

SECRETARY, FCIEA (NOW BKNK SANGH),
NAGPUR

NON APPLICANT

DISTRICT MANAGER (NOW AREA MANAGER),
F.C.I. DISTRICT OFFICE,
AJNI, NAGPUR-440015

SUBJECT :- Application for Clousure of the Case

The Non Applicant most respectfully submits as follows:-

1. That the said Case is fixed on 3-8-2012 for cross examination of the Representative of the Management.
2. That the Applicant i.e. Secretary of Union, having satisfied with the Amicable settlement, has been agreed to withdraw from the case.
3. That the applicant/ Secretary of the Union vide his application dated 03-08-2012 requested this Hon'ble Court to close the case.

Prayer

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to close the Case as requested by the Applicant Union.

Place Nagpur
Date: 03-08-2012

**NON APPLICANT
District Manager (Now Area Manager)
F.C.I., DO, NAGPUR.**

A. K. Paswan
Area Manager
F.C.I., Dist. Office
Ajni, Nagpur-15

नई दिल्ली, 16 अगस्त, 2012

का.आ. 2828.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 200/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/250/96-आई आर (सी- II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 16th August, 2012

S.O. 2828.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 200/97) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 16-8-2012.

[No. L-22012/250/96-IR (C-II)]

B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

No. CGIT/LC/R/200/97

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

General Secretary,
Rashtriya Colliery workers Federation (INTUC),
Post Nowrozabad,
Distt. Shahdol (MP) ... Workman

Versus

General Manager,
Johilla Area of SECL,
Post Nowrozabad Colliery,
Distt. Shahdol (MP) ... Management

AWARD

Passed on this 24th day of July 2012

1. The Government of India, Ministry of Labour vide its Notification No.L-22012/250/96-IR(C-II) dated 11/14-7-97 has referred the following dispute for adjudication by this tribunal:-

“ Whether the action of the management of Johilla Area of SECL in not regularizing Shri Kalimulla Beg, Shri Ramesh Tiwari and Shri Bhartendu Singh to the post of clerk grade-III (alongwith 14 employees who were regularized vide office order dated 31-5-95) is legal and justified? If not, to what relief the three workmen are entitled?”

2. The case of the Union/workmen in short, is that the workmen namely Shri Kalimulla Beg, Shri Ramesh Tiwari and Shri Bhartendu Singh were required to work on the post of clerk w.e.f. 25-3-93, 21-4-93 and 1-4-91 respectively and were continued to work till the date of filing of statement of claim on 10-8-97. They were not paid the salary of the post of clerk. The channel of promotion is from General Mazdoor to Clerk Grade III. They were having requisite qualification experience etc. in view of their continuous working on the post of clerk Gr III. The 14 persons by pick and chose method were promoted by the management vide order dated 31-5-95 and these workmen, who were seniors were not promoted. It is stated that there is unfair labour practice and exploitation. It is submitted that the management be directed to promote these workmen w.e.f. 31-5-95 with all consequential benefits.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, interalia, is that Pinoura and Pali project are also mines which are under the administrative control of Johilla Area. The scheme has been introduced to classify

the Ministerial/clerical staff on various cadre. The selection in clerk Gr.III is done amongst the existing permanent employee of the Area having three years service, minimum matriculation qualification through selection test subject to availability of sanctioned vacant post. The list of time rated workmen who were engaged in clerical job, has been submitted by the sub Area Pinoura. Shri Kalimulla Beg and two other workmen have never been engaged in clerical job as alleged by the Union. Hence their names were not forwarded by the Controlling Authority. Shri Kalimulla Beg and Ramesh Tiwari were appointed and posted at Pinoura Project in time rated category and still working as General Mazdoor, Cat-I. Shri Bhartendu Singh was absorbed in Mechanical department as per his technical qualification and he is still working as Fitter Helper. It is submitted that the Union is not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are framed for adjudication-

- I. Whether the action of the management in not regularizing these workmen to the post of clerk Grade-III alongwith 14 employees who were regularized vide order 31-5-95 is legal and justified?
- II. To what relief all or any of the workmen are entitled?

5. Before discussing the issues, it is not out of place to say that out of these three workmen, the management has regularized Shri Kalimulla Beg and Shri Ramesh Tiwari in the post of Clerk Grade-III w.e.f. 31-5-99 vide order No. 433 dated 31-5-99. (Exhibit W/5). Thus the relief of these two workmen are already granted by the management and they are now not contesting the reference.

6. Issue No. I

Now the important point for consideration is as to whether the workman Shri Bhartendu Singh is also entitled to be regularized in the post of clerk Grade-III as other two workmen Shri Kalimulla Beg and Shri Ramesh Tiwari are regularized as per Exhibit W/5. According to the Union, all the three workmen were working as clerk from the dates as has been claimed. Whereas the management states that these three workmen had never been engaged in clerical job. This shows that either the management has no fair case and has concealed the facts before the Tribunal for the reason best known to the management as two workmen are taken as clerk subsequently on reference or there is no systematic system in regularizing the employee in the post of clerk.

7. Let us examine the evidence adduced by the parties: The Union has examined the workman Shri Bhartendu Singh. He has supported the case of the Union. He has stated that he joined in SECL as General workman on 1-1-90 and after one year since 1991 he was

working as clerk but the management is not paying the salary of clerk. He has stated that the channel of promotion is from General Mazdoor to Clerk Grade- III. His juniors were promoted but the management had not considered his case for promotion. He has stated that he had given representation for promotion on 23-5-95 and his name was recommended vide letter dated 20-5-95. He has further stated that Shri Kalimulla Beg and Ramesh Prasad Tiwari were promoted in the post of clerk. He has further stated in cross-examination that he is Higher Secondary pass. He has stated that on the oral order of the Manager, he was working as clerk. His evidence clearly shows that Shri Kalimulla Beg and Shri Ramesh Kumar Tiwari are promoted in the post of clerk from General Mazdoor which is subsequently supported by the documentary evidence. His evidence further shows that he was working as clerk since 1991 and his name was forwarded for considering on the post of clerk Grade-III. There is only suggestion that he had not worked on the post of clerk. His evidence supports the case of the Union.

8. The Union has also filed documentary evidence. All the documents are admitted by the management and are marked, by the Tribunal as Exhibit W/1 to W/10. Exhibit W/1 is the letter dated 26/27-5-95 Supdt.(M)/Manager, Pali project to the Dy. Chief Personnel Manager. This is filed to show that his application was forwarded for promotion/regularization as clerical Grade alongwith one Shri Chandrabali Singh and Shri K.L.Sondhiya. This is also filed to show that he was working as a clerk and therefore his application was forwarded. Exhibit W/2 is the office order dated 31-5-95. This is filed to show that the management had regularized 14 workers from General Mazdoor to Clerk Grade-III. Exhibit W/5 is the another office order dated 31-5-99. This is filed to show that Shri Chandrabali Singh, Ramesh Pd. Tiwari and Kalimulla Beg were regularized in the post of clerk with immediate effect. Shri Kalimulla Beg and Shri Ramesh Tiwari were in this reference as well. The name of Shri Chandrabali Singh was forwarded alongwith this workman but the management had discriminated and his name had been arbitrarily left out by the management though he was also working as clerk. Exhibit W/3 is the office order dated 31-3-03. This is filed to show that Shri Kalimulla Beg, Shri Ramesh Prasad Tiwari and Shri Chandrabali Singh were again promoted from clerk Grade-III to Grade-II alongwith 20 others. These documents show that the name of the workman Shri Bhartendu Singh was left out for regularization in the post of clerk Grade-III knowingly for the reason best known to the management when Shri Chandrabali Singh was regularized in the post of clerk whose name was also forwarded alongwith this workman.

9. The Union has also filed a letter dated 10-9-95 of Dy.Chief Personnel Manager (Johilla) to Dy.Chief Personnel Manager (IR), Bilaspur which is marked as Exhibit W/3. This is also admitted by the management.

This is filed to show that Dy.CPM (Johilla) reported point status/ implementation position. Item No.4 clearly shows with respect to regularization of Shri Kalimulla Beg and Ramesh Tiwari of Pinoura Project and Pratapbhan Dwivedi and Bhartendu Singh of Pali Project to the post of clerk Grade-III and the regularization was raised by the authority. This is filed to show that Shri Bhartendu Singh and others were working on the post of clerk as such the question of regularization was raised by the authority but there is nothing to show that his case was considered by the management. Exhibit W/6 to W/8 are the letters in different dates of Supdt.(M), Pali Colliery to the District Mining officer. These are filed to show that the workman Bhartendu Singh were entrusted the work of a clerk and as such he was working in the post of clerk Grade-III since then. Exhibit W/9 is the office order dated 22/24-8-01. This is filed to show that Shri K. L.Sondhiya was also promoted/regularized in the post of clerk Grade-III on the basis of settlement with the management. His name was also forwarded for the post of clerk Gr.III alongwith the name of Bhartendu Singh. Thus documentary evidence shows that Shri Kalimulla Beg, Shri Ramesh Pd. Tiwari and Shri Bhartendu Singh were working as clerk as has been alleged by the Union. The management had regularized the above two workmen in the post of clerk Grade-III but the name of Shri Bhartendu Singh were left out without consideration. It also shows that the management has no fair case and has concealed the facts in his pleading that none of the workmen were working as clerk but subsequently Shri Kalimulla Beg and Shri Ramesh Pd. Tiwari were regularized as clerk Gr.III. This shows that the management has not come with a fair case and therefore the case of the Union is to be accepted.

10. The management has also adduced oral and documentary evidence. The management witness Shri Ashok Kumar is working as Supdt.Engineer (E&M) at Pali Sub Area. He has supported the case of the management in his evidence. He has stated that the workman was never engaged in a clerical job. He has stated with respect to the documents referred in his examination-in-chief but none of the documents have been proved nor original documents are filed. The Union has admitted the photocopies of some of the documents which are marked by the Tribunal as Exhibit M/1 to Exhibit M/57. Thus the documents referred by the management witness and are not proved by the management are not admissible in evidence. In cross-examination, he has stated that in July 2000, he came at Pali Sub Area. This shows that he is not competent to say about the facts of the year prior to him. He has stated that Shri K.L.Sondhiya was regularized on the post of clerk. The evidence of the Union shows that the name of Shri Sondhiya was forwarded alongwith the name of Shri Bhartendu Singh for regularization in the post of clerk Grade-III. Thus his evidence is not sufficient to prove the case of the management.

11. The Union has admitted some of the documents of the management and are marked by the Tribunal. Exhibit M/1 to Exhibit M/19 are the service record and other papers of Shri Kalimulla Beg. The service book of Shri Kalimulla Beg which is marked as Exhibit M/11 shows that he was appointed as General mazdoor on 13-9-91. He has promoted/regularized as clerk Grade-III and thereafter clerk Gr-II. Exhibit M/20 to M/38 are the service record and relevant papers of the workman Ramesh Prasad Tiwari. His service record also shows that he was appointed as General mazdoor on 12-9-91. Exhibit M/28 and M/29 are the synopsis of employment. The said synopsis clearly show that Ramesh Pd. Tiwari was working as Store issue clerk though he was General Mazdoor. These management documents clearly contradict the pleading of the management that these three workmen had never worked as clerk. This fact shows that the management has concealed the facts before the Court in his pleading and the story of the management that these workmen were not working as clerk is not acceptable.

12. Exhibit M/39 to Exhibit M/51 are the service record and other papers of the workman Bhartendu Singh. His service book shows that he was also appointed as General Mazdoor on 11-1-1990 and was senior to Shri Kalimulla Beg and Shri Ramesh Pd. Tiwari. Exhibit M/52 is the cadre scheme for ministerial staff. This is filed to show that for promotion to clerk Grade-III the qualification is matriculation or equivalent and three years service in the company. The evidence as discussed above clearly shows that the workman Shri Bhartendu Singh was eligible for promotion and had fulfilled all the criteria. Exhibit M/53 is office order dated 31-5-95. The Union has also filed this office order which is also marked as Exhibit W/2 and the relevancy has been discussed earlier. Exhibit M/55 is the letter dated 25-9-96 of General Manager Johilla Area to Director Personnel, SECL, Bilaspur whereby it is reported about the details of the engaged time rated persons unitwise in the post of clerks. The report shows that Shri Kalimulla Beg, General Mazdoor was deployed as clerk w.e.f. 20-5-1993 is wightbridge by the then Manager and the case is pending before ALC(C) Shahdol. Similarly Shri Ramesh Pd. Tiwari, G.M was engaged by the then EE(D&M) since 1993 and his case is also pending before the ALC(C), Shahdol. This fact clearly shows that the pleading of the management that Shri Kalimulla and Ramesh Pd. Tiwari were never engaged as clerk is false and is contradicted by the document of the management. This also shows that the management has not come in the court with correct case. This aspect of the case clearly shows that the case of the Union is fit to be accepted that all the three were working as clerk. This report further shows that there were requirements of 360 clerks/Tub Munshis in the area whereas only 302 clerks/Tub Munshis were working. This shows that there were vacancies of the post of clerks. It also appears that the name of this

workman Shri Bhartendu Singh was again left out though his name was forwarded by Supdt. (M)/manager, Pali project as he was working as clerk (Exhibit W/1). On the basis of discussion made above, it is clear that the action of the management in not regularizing the workman Shri Bhartendu Singh alongwith Shri Kalimulla Beg and Shri Ramesh Pd. Tiwari is not justified. This issue is decided in favour of the Union/workman and against the management.

13. On the basis of the discussion made above, it is clear that the workman Shri Bhartendu Singh is entitled to relief as has been claimed by the union. Accordingly the management is directed to promote/regularize the workman Shri Bhartendu Singh in the post of clerk Grade-III with all consequential benefits including promotion w.e.f. 31-5-1999 i.e. the date of promotion of Shri Kalimulla Beg and Shri Ramesh Pd. Tiwari notionally and to pay from the date of award. The reference is answered.

14. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 16 अगस्त, 2012

का.आ. 2829.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 275/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16-8-2012 को प्राप्त हुआ था।

[सं. एल-22012/66/99-आई आर (सी-II)]
बी. एम. पटनायक, अनुभाग अधिकारी

New Delhi, the 16th August, 2012

S.O. 2829.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 275/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SECL and their workman, which was received by the Central Government on 16-8-2012.

[No. L-22012/66/99-IR (C-II)]
B. M. PATNAIK, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

No. CGIT/LC/R/275/99

PRESIDING OFFICER : SHRI MOHD. SHAKIR HASAN

Shri Ghanshyam Rajak,
General Secretary,
Lal Jhanda Mazdoor Union (AITUC),
Burgess School Compound,
Bilaspur

... Workman

Versus

Shri Nagendra Kumar Pandey,
SECL, Contractor, Purana Sarkanda,
Bilaspur.

... Management

AWARD

Passed on this 20th day of July 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-22012/66/99-IR(CM-II) dated 3-8-99 has referred the following dispute for adjudication by this tribunal:-

“ Whether the action of the management of SECL, Bilaspur in terminating the services of Shri Radheshyam Kashiram and Bharatlal Devangan is legal and justified? If not, to what relief the workmen are entitled?”

2. The case of the Union/workmen, in short is that the workman Radheshyam, Kashiram and Bharat Lal Devangan were in the employment of SECL from April 1992, January 1990 and from 1-11-1989 respectively. Radheshyam and Kashiram were terminated on 29-7-97 and Bharat Lal Devangan was terminated on 1-10-97 without assigning any reason orally. It is stated that they had been terminated without complying the provision of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act, 1947). It is submitted that the workmen be reinstated with back wages.

3. The management of SECL appeared and filed Written Statement. The case of the management inter alia is that the alleged workmen were never employed by the management. They had not disclosed anything with regard to their employment. There was no relationship of employer and employee between the management and the alleged workmen. It is also denied that these alleged workmen were ever engaged by any of the contractor for execution of any nature of job. In the above circumstances, it is submitted that there is no merit in raising the dispute and these alleged workmen are not entitled to any relief.

4. On the basis of the pleadings of the parties, the following issues are for adjudication-

I. Whether the action of the management of SECL, Bilaspur in terminating the services of the alleged workmen is legal and justified?

II. To what relief the workman is entitled?

5. The Union/ the alleged workmen after filing statement of claim in the reference case became absent. Lastly the reference case is proceeded ex parte against them on 6-6-2011.

6. Issue No. I

It is not out of place to say that one Shri Nagendra Kumar Pandey was also made party to the reference who appeared to be a contractor of the SECL. The notices were sent to the said contractor by registered post but the alleged contractor did not appear to contest the reference. The case against him is also ex parte.

7. The management of SECL has adduced oral evidence in the case. Shri R.B.P. Shahi is working, as General manager(P&A) at SECL, headquarter, Bilaspur. He has stated that the alleged workmen were never appointed/ employed/engaged by the management of SECL at any time. There was no relationship of employer and employee between the management of SECL and the alleged workmen. He has further stated that these alleged workmen were not engaged by the contractors at any time. The evidence of this witness is un rebutted. There is no reason to disbelieve the evidence of this witness. His evidence clearly shows that these alleged workmen were not in the employment of the management of SECL nor of any of the contractors. Thus the question of termination to these alleged workmen for services donot arise. This issue is accordingly answered.

8. Issue No. II

On the basis of the discussion made above, it is clear that these alleged workmen were not in the employment of the management of SECL. As such they are not entitled to any relief. The reference is accordingly answered.

9. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2830.—औद्योगिक विवाद अधिनियम, 1947 (1947 का.14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय कानपुर के पंचाट (संदर्भ संख्या 23/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/05/2010-आई आर (बी-11)]

शीशा राम, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S. O. 2830.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 23/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Canara Bank and their workmen, which was received by the Central Government on 24-7-2012.

[No. L-12012/05/2010-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE SRI RAM PARKASH, PRESIDING
OFFICER, CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, KANPUR**

Industrial Dispute No. 23 of 2010

Sri Prem Kumar,
Son of Sri Bhola
Resident of 118/584 Kaushalpuri.
Kanpur.

Versus

The Deputy General Manager,
Canara Bank,
Circle Office,
Vipin Khand
Gomti Nagar,
Lucknow.

AWARD

1. Central Government MoL, New Delhi vide notification No. L-12012/05/2010-IR(B-II) dated 09-04-2010 has referred the following dispute for adjudication to this tribunal-

2. Whether the action of the management of Canara Bank, Kanpur in terminating the services without complying with the statutory provision of I.D. Act, 1947, in respect of Sri Prem Kumar son of Sri Bhola with effect from 30-12-2008 is justified and proper. What relief the concerned applicant is entitled to?

3. In this case the claimant after filing his statement of claim and certain documents in the shape of photocopies has stopped putting his appearance before the tribunal. He even, did not turn up to adduce his evidence in support of his claim. Management too has neither appeared nor has filed any reply against the claim of the workman.

4. It thus appears that the workman is not interested in prosecuting his claim, therefore, the reference is bound to be answered against the workman for want of proof.

5. Accordingly the reference is answered against the workman and in favor of the opposite party.

RAM PARKASH, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2831.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार देना बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.1, धनबाद के पंचाट (संदर्भ संख्या 123/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-8-2012 को प्राप्त हुआ था।

[सं. एल-12012/401/1995-आई आर (बी-II)]

श्रीराम, अनुभाग अधिकारी

New Delhi, the 21st October, 2012

S. O. 2831.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 123/1996) of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Dena Bank and their workmen, which was received by the Central Government on 01-08-2012.

[No. L-12012/401/1995-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. I, DHANBAD**

In the matter of a reference under section 10(1)(d)(2A)
of Industrial Disputes Act, 1947

Reference No. 123 of 1996

Parties : Employers in relation to the management of
M/s. Dena Bank, Patna

And

Their Workmen.

PRESENT : Shri Hari Mangal Singh, Presiding Officer

APPEARANCES:

For the Management : Sri Roshan Singh,
Clerk-cum-Cashier

For the Union/
Workmen : Sri Amitabh Ghosh,
Gen. Secretary, Empl. Union
Sri Champi Sandil
(Concerned workman)

State : Jharkhand

Industry : Bank

Dated 25th June, 2012

AWARD

By Order No. L-12012/401/95-IR(B-II) dated
02-12-1996 the Central Government in the Ministry of

Labour has in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

“Whether the action of the management of Dena Bank, reg. Office Calcutta in not regularizing and rather terminating the services of Sri Champai Sandil is legal and justified? If not, to what relief the workman is entitled and from which date?”

2. On 24-5-2012 a petition was moved on behalf of the concerned workman which is duly signed by him and the General Secretary of the Union, praying before this tribunal for withdrawal of the case as because the management has agreed to consider the workman's appointment in the Bank and on that petition the management raised no objection. Alongwith his petition the workman enclosed a letter dated 9-5-2012 written by the management of Dena Bank to the concerned workman, Champai Sandil wherein it has been specifically mentioned that the competent authority has approved the vacancy of sub-staff and the concerned workman's recruitment for the post may be consider subject to withdrawal of the case pending before the Tribunal.

It, therefore, shows that there is no disputes between the parties. Accordingly, I render a “No Dispute” Award in the present reference case.

H. M. SINGH, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2832.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 32/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/07/2002-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S. O. 2832.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 32/2002) of the Central Government Industrial Tribunal/Labour Court, Kanpur as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workmen, which was received by the Central Government on 24-7-2012.

[No. L-12012/07/2002-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 32 of 2002

Between

Sri Devi Prasad Verma,
C/o Sri Ganesh Dwivedi,
127/686, W- Block Keshav Nagar,
Kanpur.

Versus

The Regional Manager
Punjab National Bank,
Regional Office, Birhana Road,
Kanpur

AWARD

1. Central Government, MoL, vide notification No.L-12012/07/2002-IR(B-II) dated 21-05-2002 has referred the following dispute for adjudication to this tribunal-

Whether the action of the management of Punjab National Bank in not allowing Sri D. P. Verma to resume the work of Pigmy Deposit Collector with effect from 12-05-97 is legal and justified? If not, what relief the workman is entitled to?

3. From the reference order itself it is very much clear that the claimant Sri D. P. Verma wants to lodge his claim that the action of the management in not allowing him to resume his duties as Pigmy deposit collector with effect from 12-05-97 is legal and just and if no to what relief the workman is entitled.

4. I have gone through the definition of retrenchment as provided under Section 2-A of the Industrial Disputes Act, 1947 and on a comparative perusal of the reference order and the definition of the retrenchment as provided under Section 2-A of the Act. I do not find that the present case falls under the definition of the term retrenchment as defined under section 2-A of the Act.

5. Before parting with it, I may make it clear that at any rate the present dispute cannot be termed as an industrial dispute within the meaning of section 2-A of the Act.

6. Since it is not an industrial dispute within the meaning of the provisions of the Act therefore, the claimant is not entitled to any relief as claimed by him in his claim.

7. Reference is answered accordingly.

RAM PARKASH, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2833.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/1/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था।

[सं. एल-12011/109/2004-आई आर (बी-II)]

शोश राम, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S. O. 2833.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. CGIT/LC/R/1/05) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now, as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Bank of India and their workmen, which was received by the Central Government on 24-7-2012.

[No. L-12011/109/2004-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/1/05

PRESIDING OFFICER: SHRI MOHD. SHAKIR HASAN

The Secretary,
M.P. Central Bank Retired Employees Association,
697, Kamla Nehru Nagar,
Jai Siyaram Bhawan,
Jabalpur

...Workman

Versus

The Chief Manager,
Central Bank of India,
NCI Bandra Premises Cooperative Society Ltd.,
Bandra Kurla Complex, Bandra (East),
Mumbai

...Management

AWARD

Passed on this 18th day of May 2012

1. The Government of India, Ministry of Labour vide its Notification No. L-12011/109/2004-IR(B-II) dated 23-11-2004 has referred the following dispute for adjudication by this tribunal:-

“ Whether the claim made by M.P. Central Bank Retired Employees Association for payment of interest on the delayed payment of commutation

of pension to Shri Sarman Lal Sen, Ex- Head Cashier is justified? If so, what relief the disputant concerned entitled to?”

2. The case of the Union/Workman, in short, is that Shri Sarman Lal Sen was Head Cashier at Murwari of Central Bank of India. He retired on 30-6-01 under Voluntary Retirement Scheme (in short VRS). He had commuted his pension but his commuted pension of the amount of Rs. 1,97,513 was paid on 31-10-01 i.e. after 122 days from the due date. It is submitted that the management be directed to pay interest @ 10 % per annum on the amount of commuted pension for delay payment on 31-10-01 instead of 30-6-01.

3. The management appeared and filed Written Statement to contest the reference. The case of the management, inter alia is that the workman was working as Head Cashier at Murwari Branch of Central Bank of India where he made an application for opting VRS under the Central Bank of India Employees Voluntary Retirement Scheme, 2001. His request for taking VRS was accepted by the management of the Bank and was relieved from the Bank services w.e.f. 30-6-2001 vide order dated 27-6-2001. The workman filed his pension application with proposed commutation application on 1-7-2001 which was paid to him vide communication dated 25-10-2001. It is stated that around 5500 employees opted for VRS and the Bank decided to follow uniform procedure for all such cases. A computerised programme was followed for all such cases and therefore it caused certain delay in payment of pension but the delay was not intentional looking to the number of opted employees for VRS. It is submitted that the workman Sarman Lal Sen is not entitled for any interest in the above circumstances of the case and the reference be, accordingly, answered.

4. On the basis of the pleadings of the parties, the following issues are settled for adjudication-

I. Whether the claim of Shri Sarman Lal Sen, Ex-Head Cashier for payment of interest on the delayed payment of the amount of commutation of pension is justified?

II. To what relief, if any, Shri Sarman Lal Sen, Ex-Head Cashier is entitled?

5. Issue No. 1

The following facts are admitted by the parties in their pleadings—

1. Shri Sarman Lal Sen was Head Cashier at Murwari Branch of Central Bank of India.
2. He opted for VRS from the Bank service by submitting application on 7-3-01.
3. His option for VRS was accepted by the management and was relieved from Bank Service on 30-6-2001 vide order dated 27-6-2001.

4. He commuted 1/3rd pension and which was Rs. 1,97,513 and was paid to him on 30-10-01.
5. There was delay in payment of commuted pension of about three months from the date of retirement i.e. 1-7-2001.

6. The only important point for consideration is as to whether there was bonafide delay in payment of commuted pension of Rs. 1,97,513 to the workman or it was an intentional delay. To prove the case, the Union/workman has examined oral and documentary evidence. The workman Sarman Lal Sen has supported his case in his evidence. He has stated that Bank prepared a VRS unilaterally. He accepted the scheme and applied for retirement under VRS on 7-3-2001. His application was accepted by the management Bank vide order dated 27-6-2001 and was relieved from services at the closing hours of the Bank on 30-6-2001. The said office order states that the retirement benefits would be paid at a later date within the stipulated period but no such period was mentioned in the scheme. The retirement benefits were to be paid on 30-6-01 or on 1-7-01. The commutation value of pension was Rs. 1,97,513 and was paid on 24-10-01. There is nothing in his evidence to show that as to when he applied for commutation of pension. The commutation of pension was not an automatic recourse. The pensioner, has to opt for commutation of pension. In absence of evidence of the fact that as to when the workman applied for commutation of pension, it is difficult to assess that there was a bonafide delay or not.

7. Now let us examine the documentary evidence adduced by the Union/workman. Ex. W/1 is the photocopy of a demand draft of Rs. 2,24,051 in the name of the workman issued on 20-10-2001. This is filed to show that the retirement benefits were paid on 20-10-2001. This is also admitted by the management. Exhibit W/2 is the office order dated 27-6-2001 whereby the application of the workman dated 7-3-2001 was accepted for VRS. It is an admitted document. The said order further shows that the workman was to relieve from the Bank Service at the closing hours of the Bank on 30-6-2001. The order further shows that the workman was advised to complete the formalities immediately so as to release the terminal dues within the stipulated time. The order further shows that the terminal benefits was to be paid at the later date within the stipulated period as mentioned in the scheme. This order clearly shows that the terminal benefits was to be paid to the workman after completing the formalities on later date after relieving from service. There is nothing in the pleading or in the evidence to show that as to when the workman had completed the formalities as required for payment of retirement dues.

8. Exhibit W/13 is the Pension Payment Scroll of the workman and Exhibit W/4 is the calculation sheet of pension and commutation of pension. The said scroll and

calculation sheet are of 25-10-2001. This is filed to show that commutation value of pension was Rs. 1,97,513. The scroll is filed to show that pension and commutation value of pension were Rs. 2,13,362 whereas the payment was done to the extent of Rs. 1,88,331.12. The said scroll shows that Rs. 25,030.86 was excess payment done in the amount of gratuity which was recovered from the workman. The office order dated 27-6-2001 (Exhibit W/2) also shows the excess payment would be adjusted from the terminal benefits. Moreover the claim of Rs. 25,030.86 is beyond the scope of the reference. The Tribunal cannot go beyond the reference. The only reference to the Tribunal is the claim of interest on the amount of commuted pension for delay payment. Exhibit W/5 is the statement of the saving Bank account of the workman in which the amount was credited on 24-10-2001. This is filed to show that the payment was done on 24-10-2001. This is also an admitted document. Exhibit W/6 is the acknowledgement receipt dated 30-10-2001 whereby the gratuity amount was paid. Exhibit W/7 is the notice of Asstt. Labour Commissioner to the management for his appearance before the ALC. Exhibit W/8 is the Pensioner's copy whereby the pension was fixed to the workman. Thus the documentary evidence do not show that as to when the workman had applied for commutation of pension because it was not an automatic process for commutation of pension to any employee. It is not reasonably proved that the management had done intentional delay in payment of commuted pension of Rs. 1,97,513 to the workman.

9. On the other hand, the management's case is that the workman Shri Sarman Lal Sen made an application on 7-3-2001 for opting VRS 2001 and his application was accepted on 27-6-2001. He was relieved after the Bank hours on 30-6-2001. He made an application for commutation of pension only on 1-7-2001. It is further stated that about 5500 employees had opted under VRS, 2001 and uniform computerized procedure for all cases were taken up and therefore it caused certain delay in payment of pension but this was not intentionally done looking to the number of employees opted for VRS. The management has adduced oral and documentary evidence. Before discussing the evidence of the management, it is better to see the VRS Scheme 2001. The copy is filed by the management. The Central Bank introduced the scheme which was called as Central Bank of India Employees Voluntary Retirement Scheme, 2001 and was effective from 22-2-2001 to 8-3-2001 only. This scheme shows that it was introduced for the first time for limited period. Clause 9.13 of the scheme deals with the period taken for payment of exgratia payable to the employees which runs as follows—

“The exgratia payable to an employee on opting for Voluntary Retirement under the scheme would be paid to him/her within a period of 45 days from the date of relieving of the employee, subject to Clause 9.15 of this Scheme.”

This shows that 45 days was normal time taken for payment of retirement benefits including commuted pension from the date of relieving i.e. from 1-7-2001. This shows that there was only one and half months delay in payment of commuted pension instead of three months and above.

10. The management witness Shri B.N.Shukla is presently working as Regional Manager at Jabalpur. He has supported the case of the management. He has stated that Shri Sarman Lal made an application on 7-3-2001 for retirement in VRS. His request for taking voluntary retirement was accepted by the management vide order dated 27-6-2001 whereby he retired w.e.f. 30-6-2001. Thereafter he submitted his entire pension papers alongwith an application for commutation of pension on 1-7-2001 which was paid to him vide communication dated 25-10-2001. He has further stated that under VRS around 5500 employees opted for voluntary retirement. The Bank decided to follow uniform computerized procedure for all such cases opted under VRS and it caused certain delay and there was no intentional delay. He has been cross-examined at length. There is nothing to disbelieve his evidence. It is clear from his evidence that the application for commutation of pension was only given on 1-7-2001 and there were about 5500 such cases in view of the scheme of voluntary retirement. It is evident that 45 days time was granted to the management in accordance with the scheme as such there was about one and half month delay. Considering the large number of optees for VRS, this delay appears to be bonafide. His evidence clearly shows that it is not reasonable to grant any interest of the delay payment which appears to be beyond the control of the management in view of large number of optees at a time for VRS and it cannot be said as inordinate delay.

11. The management has also adduced documentary evidence. Exhibit M/1 is the office order dated 27-6-2001 whereby the application of voluntary retirement under the scheme was accepted and was to relieve w.e.f. 30-6-2001. Exhibit M/2 is Pension Payment Scroll. Exhibit M/3 is calculation chart of pension and commutation value of pension. Exhibit M/4 is the statement of Saving Account of the workman. Exhibit M/5 is the acknowledgement receipt of the workman of the amount of gratuity. These documents are also filed by the workman and have been discussed earlier. Thus from the evidence of both the parties, it is clear that there was no inordinate delay in payment of the amount of commutation of pension rather it was due to influx of the optees of the scheme of voluntary retirement. This issue is decided against the workman and in favour of the management.

12. Issue No. II

Considering the discussion made above, I find that the action of the management in payment of commutation of pension on 24-10-2001 is justified and the workman is

not entitled to any relief. Accordingly the reference is answered.

13. In the result, the award is passed without any order to costs.

MOHD. SHAKIR HASAN, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2834.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इलाहाबाद बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/भ्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 36/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2012 को प्राप्त हुआ था।

[सं. एल-12012/84/2005-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S.O. 2834.—In pursuance of Section 17 of the Industrial Disputes Act, 1947. (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 36/2009) of the Central Government Industrial Tribunal/Labour Court No.1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Allahabad Bank and their workman, which was received by the Central Government on 1-8-2012.

[No. L-12012/84/2005-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s 10 (1) (d) (2A) of the Industrial Disputes Act, 1947

Reference No. 36 of 2009

Parties:

Employers in relation to the management of Allahabad Bank

AND

Their workman

Present: Shri H.M. SINGH, Presiding Officer

Appearances:

For the Employers : Shri O. P. Verma, Advocate.

For the Workman : Shri D. Mukherjee, Advocate.

State: Uttar Pradesh

Industry: Bank

Dated, the 5th June, 2012

AWARD

By Order No. L-12012/84/2005-IR (B-II) dated 6-2-2006 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to the Central Govt. Industrial Tribunal-cum-Labour Court, Lucknow :

“Whether the action of the management of Allahabad Bank in terminating the services Shri R. P. Jha, Clerk-cum-Cashier vide order No. RO/MIR/VIG/685 dated 17-6-2004 is legal and justified ? If not, to what relief the concerned workmen is entitled to ?”

2. When this dispute was pending before Central Govt. Industrial Tribunal-cum-Labour Court, Lucknow, on consideration of the facts brought out by the workman and in exercise of the powers conferred by Section 7 read with sub-section (1) of the Section 33-B of the Industrial Disputes Act, 1947, the Central Government, Ministry of Labour, vide its Order No. L-12012/84/2005-IR (B-II) dated 16-6-2009 transferred this dispute for adjudication by this tribunal.

3. The case of the concerned workman is that he was appointed as Clerk-cum-Cashier under handicap quota on 29-6-1984 and was posted at Baberu Branch, Dist. Banda. He was transferred to Kharkhari, Dist. Dhanbad in May 1985. Again he was transferred to Giridih in July, 1985 just after two months. He was again transferred to Madhupur in February 1987. He was then transferred to Katipur in November, 1990. Then to Kachwa Bazar in February, 1992, and then to Chunnar on 18-9-2000. The concerned workman was wrongly and illegally suspended by the management vide order dated 23-4-2003. Thereafter he was served a chargesheet dated 2-6-2003 on the allegation of consuming liquer during duty hours and for alleged misbehaviour with alleged customer. He replied to the chargesheet denying the allegations levelled against him. The management did not agree with the reply and appointed Sri K.R. Sinha as Enquiry Officer and Sri A.K. Pandey as Presenting Officer. After conducting the enquiry the Enquiry Officer held that the allegation of consuming liquer not proved. On the basis of perverse finding of the Enquiry the management dismissed the concerned from service. The dismissal of the concerned workman is illegal and void-abinitio.

Under such circumstances it has been prayed that the Hon'ble Tribunal be pleased to pass an award by directing the management to re-instate the concerned workman with full back wages and other attendant benefits.

4. The case of the management is that the concerned workman was appointed as Clerk-cum-Cashier on 29-6-1984 at Baberu Branch, Dist. Banda. Thereafter he was

transferred to Kharkhari, Dist. Dhanbad in May, 1985. Later on he was transferred to Madhupur in February, 1987. During his service at Madhupur Branch, he was charge-sheeted for his gross misconduct. He submitted his guilts voluntary during domestic enquiry and in final decision of the Disciplinary Authority order dated 5-10-1990 for dismissal of the concerned workman. On appeal against disciplinary authority order dated 5-10-90 was considered by the Appellant Authority by modifying the order of disciplinary authority as “Two increment be stopped with cumulative effect” vide order dated 15-12-90. The concerned workman was again charge-sheeted for his misconduct at Kachwa Bazar Branch, Dist. Mirzapur (U.P.) vide letter dated 31-3-99. By letter dated 4-9-2000 he partly confessed his guilt. The Regional Officer, Mirzapur had passed final order vide order dated 14-9-2000 to lower down one increment in scale of the concerned workman. He was transferred to Chunar Branch from Kachwa Bazar Branch. He was again charge-sheeted vide order dated 2-6-2003. The concerned workman replied to the chargesheet dated 23-6-2003. The Disciplinary Authority had ordered for departmental enquiry against the concerned workman vide order dated 18-7-2003. The management had taken all steps and adopted fair and proper departmental enquiry and full opportunity was given to the concerned workman, who participated in the enquiry proceeding. The charge of gross misconduct was proved during the domestic enquiry but consuming liquer was not proved. the concerned workman is undisciplined workman and misbehaved the Controlling Authority habitually, so he is not entitled for any relief.

It has been prayed that the Hon'ble Tribunal be pleased to pass an award holding that the dismissal of the concerned workman is justified and he is not entitled to any relief.

5. The management produced MW-1, R. S. Dwevedi. The documents of the management have been proved as Exts. M-1 to M-29 on formal proof being dispensed with.

The concerned workman has examined himself as WW-1.

6. The departmental enquiry was found to be not fair and proper vide order dated 12-5-2010.

7. Main argument advanced on behalf of the concerned workman is that the charge-sheet is vague and indefinite at it did not disclose the name of the customer and the time of alleged incident. He replied to the chargesheet denying the charges emphatically. But the management conducted an invalid and irregular enquiry through a biased Enquiry Officer, against the concerned workman.

Management representative argued that the concerned workman misbehaved the higher officials and bank customers also. He was charge-sheeted a number of times, but has not reformed himself. It has also been argued

that during his service he was charge-sheeted for his gross misconduct and he admitted his guilts voluntary during domestic enquiry and in final decision of the Disciplinary Authority dated 5-10-1990 for dismissal of the concerned workman—marked as Ext. M-23- page 82 to 84, on appeal against Disciplinary Authority order was considered by the Appellate Authority by modifying stoppage of two increments with cumulative effect vide order dated 15-12-1990, as per Ext. M-24 (page 85-86) and M-25/1 (pages 87 to 89). Again he was charge-sheeted for his misconduct at Kachwa Bazar Branch, Dist. Mirzapur (U.P.) vide letter No. RO/Mir/Vig/3013 dated 31-3-99, as per Ext. M-26 (page 92-93). A letter dated 4-9-2000 addressed to Regional Manager-cum-D.A., R.O. Mirzapur by concerned workman with partly confess his guilt, as per Ext. M-28 (page 97). Regional Officer, Mirzapur (U.P.) passed final order vide Reference No. RO/MIR/Insp/VIG/1708 dated 14-9-2000 to lower down one increment in scale of the concerned workman, as per Ext. M-29 (Page 99). Again he was transferred to Chunar Branch and again he was charge-sheeted on 2-6-2003, as per Ext. M-4 (Page 5-6). The concerned workman replied to the charge-sheet dated 23-6-2003, as per Ext. M-5 (Pg. 7). Disciplinary Authority had ordered for departmental enquiry against the concerned workman vide letter dated 18-7-2003, as per Ext. M-6 (page-8). It has been argued that the concerned workman is habitual undisciplined, who cannot be retained in service.

On behalf of the concerned workman 1999 (81) FLR page 188 (SC) has been referred in which Hon'ble Supreme Court laid down—Industrial Disputes Act, 1947—Section 11-A—Dismissal—Tribunal's power—To consider the domestic enquiry and to ask for the fresh evidence—Management, if does not lead evidence—Management would suffer.

If the management does not lead any evidence by availing of the opportunity, it cannot raise any grouse of any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the management, the validity of the action taken by it has to be scrutinised and adjudicated upon on the basis of such fresh evidence.

Another law referred on behalf of the concerned workman is 1989 Lab. I.C. 1043 in which the Hon'ble Supreme Court laid down—"U.P. Industrial Disputes Act, 1947. S.6 (2A)—Termination of service—Disciplinary enquiry found to be fair and lawful and its findings were not vitiated in any matter—That by itself would not be ground for non interference with order of termination of service by Labour Court—Direction to Labour Court in the facts, for reinstatement of employee with 75% back wages, on ground that erring workman should be given opportunity to reform himself and prove to be loyal disciplined employee of Company—Not illegal and arbitrary. (Industrial Disputes

Act (1947), S. 11-A) (Constitution of India Act, 14 (Termination of Service—Disciplinary enquiry fair and lawful—Findings not vitiated—Interference and reinstatement by Labour Court, even thereafter—Not illegal). (Misconduct—Punishment—Reformative approach) "

On behalf of the management (2008) 1 Supreme Court Cases (L&S) 164 has been referred in which the Hon'ble Supreme Court laid down—

"Misconduct—Absenteeism—Nature of, and appropriate punishment therefor—Habitual absenteeism, held, amounts to gross violation of discipline—where the workman, who had been in the past found guilty of unauthorised absenteeism several times (15 times in this case), was in a properly conducted departmental enquiry once again found guilty of unauthorised absence for a long period (105 days in this case) held, his consequential dismissal from service ought not to have been treated to be harsh and interfered with by Labour Court/High Court case law on scope of exercise of power under S. 11-A, Industrial Disputes Act, 1947, discussed—Industrial Disputes Act, 1947—S. 11-A and S. 10(4-A) (as in force in Karnataka). Chronological list of cases cited—

1. (2006) 13 SCC 613 : AIR 2006 SC 615 LIC of India V. R. Dhandapani.
 2. (2005) 3 SCC 401 : 2005 SCC (L&S) 417, M.P. Electricity Board V. Jagdish Chandra Sharma.
 3. (2005) SCC 331 : 2005 SCC (L&S) 412, Muriadih Colliery of Bharat Coking Coal Ltd. V. Bihar Colliery Kamgar Union.
 4. (2005) 3 SCC 134 : 2005 SCC (L&S) 361, Mahindra and Mahindra Ltd. V. M/s. Narwade.
 5. (2005) 2 SCC 489 : 2005 SCC (L&S) 298, Bharat Forge Co. Ltd. V. Uttam Manohar Nakat.
 6. (2004) 8 SCC 200 : 2004 SCC (L&S) 1067, Krishnakali Tea Estate V. Akhil Bharatiya Chah Mazdoor Sangh.
 7. (2000) 3 SCC 324 : 2000 SCC (L&S) 349, U.P. SRTC V. Subhash Chandra Sharma.
 8. (1996) 6 SCC 590 : 1996 SCC (L&S) 1484, New Sharrck Mills V. Mheshbhai T. Rao.
 9. (1996) 6 SCC 417 : 1996 SCC (L&S) 1455, State of Rajasthan V. B. K. Meena.
 10. (1994) 1 Scale 631, Kerala Solvent Extraction Ltd. V. A. Unikrishnan.
 11. (1997) 2 SCC 502 : 1973 SCC (L&S) 510, Tournamulla Estate V. Workers.
 12. (1960) 1 LLJ 518 (SC) Orissa Cement Ltd. V. Adhikundu Saha.
 13. AIR 1959 SC 529, Burn & Co. Ltd. V. Workman.
- In Mahendra and Mahindra Ltd. V. N. B. Narawade, it

was noted as follows :

“20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment in the absence of any such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed hereinabove at least in two of the cases cited before us i.e. Orissa Cement Ltd. and New Shorrock Mills this Court held ‘Punishment of dismissal for using of abusive language cannot be held to be disproportionate’. In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove.”

8. In this respect the statement of the concerned workman (WW-1) is very much material. In his cross-examination he stated that I was appointed on 29-6-84 at Baberu Branch, Dist. Banda. I was posted In Giridih Main Branch of the Bank. I was mutually transferred to Madhupur. I received chargesheet for misconduct. I gave reply to the chargesheet. I was dismissed from service after I was reinstated after stopping two increments. Then I was transferred to Kachwa Bazar Branch at U.P. At Kachwa Branch due to misconduct one increment was lowered down from my salary. Then I was transferred to Chunnar Branch. In Chunnar Branch chargesheet was issued to me. I filed my reply and my reply was found unsatisfactory. Enquiry was constituted. I appeared and participated in the enquiry. I cross-examined the management's witnesses. After enquiry I was dismissed from service. I filed my appeal before the Disciplinary Authority, which was not found satisfactory by the Disciplinary Authority. I appealed against the order of the Disciplinary Authority regarding domestic enquiry which was rejected by the Appellate Authority.

The statement of the concerned workman shows that

he is indisciplined workman and misbehaved the Controlling Authority habitually. The physical disability of the concerned workman does not give him a licence to indulge misconduct, misbehave the higher officials of the Bank and customers also. So, this type of employee cannot be retained in the service of the Bank.

9. Considering the above facts and circumstances, I hold that the action of the management of Allahabad Bank in terminating the services of Shri R.P. Jha, Clerk-cum-Cashier vide Order No. RO/MIR/VIG/685 dated 17-6-2004 is legal and justified. Hence, the concerned workman is not entitled to any relief.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2835.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 94/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2012 को प्राप्त हुआ था।

[सं. एल-12011/91/2006-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S.O. 2835.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 94/2006) of the Central Government Industrial Tribunal/Labour Court No.1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workmen, which was received by the Central Government on 1-8-2012.

[No. L-12011/91/2006-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of a reference U/s 10 (1) (d) (2A) of the Industrial Disputes Act, 1947

Reference No. 94 of 2006

Parties:

Employers in relation to the management of UCO Bank, Patna.

AND

Their workman

Present: Shri H.M. SINGH, Presiding Officer

Appearances:

For the Employers : Shri A. K. Sinha, Sr. Manager.

For the Workman : Shri B. Prasad,
Authorised Representative.

State: Bihar

Industry: Bank

Dated, the 6th June, 2012

AWARD

By Order No. L-12011/91/2006-IR (B-II) dated 17-10-2006 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute for adjudication to this Tribunal :

"Whether the action of the management of UCO Bank, Patna in not reinstating and regularising the services of Shri Dasarath Mandal, S/o Shri Kailash Mandal, Vill-Mahaddipur, P.S.-Kasim Bazar, Mungher, Casual worker performing the duties of peon is legal and justified and expedient ? If not, to what relief Shri Dasarath Mandal is entitled to ?"

2. The case of the concerned workman is that he was orally appointed by the management of UCO Bank, Mungher Branch to discharge the duties of a peon w.e.f. 23-5-1981. After appointment, he performed all the duties of a peon from 10 A.M. to 6 P.M. on weekdays and from 10 A.M. to 3 P.M. on Saturdays. The duties of the workman included-taking out ledgers, registers from the almirah, placing the same on tables, counters and vice-versa ; carrying token books scroll book; posting of mails; distribution of Bank's dak; serving water/tea to the members of staff ; stitching of vouchers, currency notes whenever required. He was being paid his wages @ Rs.5 per day initially, which was subsequently raised to @ Rs.35 per day. The payment was made through vouchers. When he was working with the Bank, a Settlement was arrived at between the representatives of workmen Unions and the management of UCO Bank at Apex level on 12-10-1989 for permanent absorption of the services of all daily rated workmen performing the works of a peon and working for 240 days during the period 12-10-86 to 12-10-1989. Following the settlement, the workman submitted application to the Manager of the Bank for his empanelment and permanent absorption in the services of the Bank as a peon. But all of a sudden, the management instructed the workman on 1-12-1997 to stop his work and not to attend the office from the following days. Accordingly, the services of the workman were terminated w.e.f. 1-12-1997. He approached the management for his reinstatement and regularisation. The management started regularising the services of other workmen from the year 2003 as peons.

When the management did not regularise him as a peon, he approached the sponsoring union for redressal of his grievances. Accordingly, the union raised an industrial dispute but the conciliation proceeding ended in failure. Thereafter the appropriate Govt. referred the dispute for adjudication to this Tribunal. The workman was neither given notice nor notice pay nor any retrenchment compensation prior to termination. The action of the management in terminating the services of the workman is covered under Sec. 2(oo) of the I. D. Act, 1947. The action of the management in terminating the services of the workman and not regularising him as a peon is neither legal, nor justified. The management violated the mandatory provision as contained in Section 25-F of the I.D. Act, 1947.

In such circumstances it has been prayed that the Hon'ble Tribunal be pleased to pass an award by directing the management to re-instate the concerned workman with back wages and regularise his service as a peon w.e.f. 1-4-2003 and other consequential benefits.

3. The case of the management is that a Bipartite Agreement was signed on 1-8-1979 and 31-10-1979 between the union and the management of UCO Bank. As per the agreement the casual worker/part time sweeper of the subordinate cadre who are employed to work less than six hours a week was to be engaged with certain terms and condition.

Sri Dasarath Mandal was hired on casual basis for bringing drinking water and sometime to clean the branch premises. The Branch Manager who engaged him on casual basis for bringing drinking water and sometime to clean the branch premises is not authorised to do so. So, his engagement is illegal. The UCO Bank Employees Association raised the present industrial dispute for regularisation of Dasarath Mandal on 21-12-2005. An agreement was signed on 12-10-89 with the three recognised unions, namely (i) All India UCO Bank Employees Federation, (ii) United Commercial Bank Employees Association, (iii) All India United Commercial Bank Staff Federation with the management at the apex level whereby it was agreed that these who have completed 240 days or more. There were other terms and conditions in the agreement. Being aggrieved by the said UCO Bank Employees Federation filed a writ application in the Calcutta High Court bearing W.P. No. 1390 of 1998 on behalf of the empanelled casual part time employees working on different branches of India for regularisation in service in terms of agreement dated 12-10-1989. A panel of 460 was prepared and till date only 60 casuals were observed against permanent vacancy. In view of the submission of the Bank, the Hon'ble Calcutta High Court by an order dated 4-8-1999, observed that restriction imposed by the Reserve Bank of India, the Bank can not absorb the said casual workers. In spite of the aforesaid judgement the Union raised the present industrial dispute. The concerned workman never worked for full day.

Under such circumstances, it has been prayed that the Hon'ble Tribunal be pleased to hold that the action of the management of UCO Bank, Patna, is legal and justified and the concerned workman is not entitled to any relief.

4. Both the parties filed their respective rejoinders admitting and denying the contents of some of the paragraphs of each other's written statement.

5. The management produced MW-1, Nand Lal Paswan and marked documents as Exts. M-1 to M-7.

The concerned workman examined himself as WW-1 and documents have been marked as Exts. W-1 to W-5/1.

6. Main argument advanced on behalf of the concerned workman is that he worked with the management as casual worker since 23-5-81 and completed 240 days attendance. There is a settlement at Apex level on 12-10-89 for permanent absorption of the services of all daily-rated workman who worked for 240 days during the period 12-10-86 to 12-10-89, but the management is not regularising him, though he was stopped from duty w.e.f. 1-12-1997.

The management argued that the concerned workman cannot be regularised. The management's witness in his examination in chief stated that there was a circular for not regularising the workmen. But in this respect on behalf of the workman it has been argued that the management is bound to follow the settlement and regularise his as per Ext. W-2, W-3 and W-4. It has also been argued that casual workers raised an industrial dispute as per Ext. W-5.

The management has given, as per Ext. M-4, working days of the concerned workman. But it has been stated in last para of page 2 of Ext. M-4 from 12-10-86 to 12-10-89 working days cannot be calculated. The concerned workman stated that he had worked for more than 240 days in a calendar year.

In this respect MW-1 stated in cross-examination that I know the workman. I cannot say first date of engagement and last date of removal. There was a settlement in 1989 for regularisation of workers who worked for 240 days, and a number of persons have been regularised under this settlement. I cannot say 299 Arm-Guards have been appointed. Period was not mentioned in the voucher. Some voucher were available and same are not traceable. This statement of the management's witness shows that a number of persons have been regularised as per settlement of 1989, Ext. W-4. So, there is no ground that he has not worked for 240 days from 12-10-86 to 12-10-89 and the management is bound to fulfil the settlement as per Ext. W-4.

7. On behalf of the management 1999 (3) PIJR 762 has been referred. They have also referred 2009 (2) PIJR 1017.

In view of the above facts it shows that the management has violated the Settlement, Ext. W-4, which is not justified.

8. In the result, I hold that the action of the management of UCO Bank, Patna in not re-instating and regularising the services of Shri Dasrath Mandal, S/o Shri Kailash Mandal, Vill- Mahaddipur, P.S. Kasim Bazar, Mungher, Casual worker performing the duties of peon is not legal and justified. Accordingly, the concerned workman is entitled to be reinstated in service with effect from the date of his stoppage of work and to be regularised as Peon from the year 2003. The management is directed to implement the award within 30 days from the date of publication of the Award.

This is my Award.

H. M. SINGH, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2836.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, बीकानेर के पंचाट (संदर्भ संख्या 4/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-7-2012 को प्राप्त हुआ था।

[सं. एल-12012/82/2000-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S.O. 2836.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 4/2000) of the Industrial Tribunal/Labour Court, Bikaner now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workmen, which was received by the Central Government on 24-7-2012.

[No. L-12012/82/2000-IR (B-II)]

SHEESH RAM, Section Officer

अनुबन्ध

औद्योगिक विवाद अधिकरण, बीकानेर

पीठासीन अधिकारी : रमेशचन्द्र पारीक, R.H.J.S.

औद्योगिक विवाद प्रसंग संख्या 4/2000

कपिल देव पुत्र श्री किशनलाल ओझा आयु 30 वर्ष निवासी काशीभवन के पास, तेलीवाड़ा चौक, बीकानेर (राजस्थान)

—प्राथी/श्रमिक

विरुद्ध

1. डिवीजनल मैनेजर, डी.एम. ऑफिस, यूनाईटेड कामर्सियल

बैंक, जी 79, शास्त्रीनगर, जोधपुर

2. शाखा प्रबन्धक, यूनाइटेड कार्मिशयल बैंक सिटी ब्रांच भुजिया बाजार, बीकानेर

3. शाखा प्रबन्धक, यूनाइटेड कार्मिशयल बैंक गंगाशहर ब्रांच नई लाईन गंगाशहर (बीकानेर)

—अप्रार्थीगण/नियोजक

उपस्थिति :-

1. अधिवक्ता श्री नरेश श्रीमाली, प्रार्थी श्रमिक पक्ष के लिए
2. अधिवक्ता श्री हरेन्द्र कुमार महोबिया, अप्रार्थीगण के लिए

अधिनिर्णय

दिनांक 27 दिसम्बर, 2011

श्रम मंत्रालय, भारत सरकार ने औद्योगिक विवाद अधिनियम, 1947 (जिसे आगे चलकर केवल "अधिनियम" कहा जावेगा) की धारा 10 की उपधारा (1) के खण्ड (घ) के अधीन जारी अधिसूचना क्रमांक एल.12012/82/2000 दिनांक 18-10-2000 के द्वारा इस अधिकरण को निम्न विवाद अधिनिर्णयार्थ भेजा था :-

"Whether the action of the management of UCO Bank, Jodhpur & Bikaner in terminating the service of Shri Kapil Deo S/o Sh. Kishanlal Ojha w.e.f. 1-8-1996 was justified? If not, to what relief the workman is entitled and from what date?"

2. प्रसंग प्राप्त होने पर प्रकरण दर्ज रजिस्टर किया गया।

3. दोनों पक्षकारों द्वारा अपने-अपने लिखित अभिवचन प्रस्तुत किए गए हैं अर्थात् प्रार्थी श्रमिक कपिलदेव (जिसे आगे चल कर संक्षेप में केवल प्रार्थी श्रमिक कहा जावेगा) द्वारा प्रस्तुत स्टेटमेंट ऑफ क्लेम का जवाब अप्रार्थी संस्थान यूको बैंक के रीजनल मैनेजर द्वारा दिया गया है।

4. संक्षेप में प्रकरण के तथ्य इस प्रकार बतलाए गए हैं कि प्रार्थी श्रमिक को पूर्णतया स्थाई, स्वीकृत एवं चतुर्थ श्रेणी कर्मचारी के रिक्त पद पर दिनांक 6-4-89 को अप्रार्थी संख्या 2 द्वारा नियुक्त किया गया था, प्रार्थी द्वारा अप्रार्थी के नियोजन में निरन्तर कार्य किया गया और प्रार्थी को कार्य के बदले वाउचर्स पर दैनिक वेतन का भुगतान किया जाता रहा था प्रार्थी के कार्य व व्यवहार के प्रति अप्रार्थी को किसी प्रकार की कोई शिकायत नहीं थी। प्रार्थी से चतुर्थ श्रेणी के पद पर पानी भरने का कार्य, फाइल्स एक टेबल से दूसरी टेबल तक पहुंचाने, वाउचर्स को एक जगह से दूसरी जगह पहुंचाने, नगद रुपयों की गड्डी की सिलाई कार्य, शाखा कार्यालय से मुख्य शाखा के ई.एम. रोड, शाखा में क्लेयरिंग लाने व ले जाने, वाउचर्स सिलाई एवं सप्लीमेण्टरी लिखाई तथा कभी-कभी बेलेन्स बुक में बेलेन्स उतारने का कार्य भी करवाया जाता था। प्रार्थी द्वारा दिनांक 6-4-89 से 31-7-96 तक बिना किसी व्यवधान के निरन्तर अप्रार्थी के नियोजन में कार्य करना एवं माह सितम्बर व अक्टूबर 95 में शाखा प्रबन्धक द्वारा प्रार्थी को अप्रार्थी सं. 3 गंगाशहर शाखा में कार्य करने हेतु भेजना

बतलाते हुए वाउचर्स पर निरन्तर भुगतान करने के साथ-साथ यह भी अंकित किया गया है कि कभी-कभी प्रार्थी को अप्रार्थी द्वारा रामदेव के नाम से वाउचर्स बनाकर उससे रामदेव के नाम से हस्ताक्षर करवाकर भुगतान किया जाता था और इसका कारण पूछने पर अप्रार्थी द्वारा यह जवाब दिया जाता कि तुम्हें भुगतान से मतलब है अतः तुम्हें इससे क्या लेना देना कि वह किस नाम से हो रहा है। अप्रार्थी के उक्त कार्य को अनफेयर लेबर प्रैक्टिस की संज्ञा देते हुए अप्रार्थी सं. 2 द्वारा 1-8-96 को भुगतान किए जाने के बाद मौखिक आदेश से उसी दिन से कार्य पर उपस्थित नहीं होने हेतु निर्देश दिये और पूछने पर कोई कारण नहीं बताया। प्रार्थी श्रमिक ने अपनी इस सेवामुक्ति को अधिनियम की धारा 2 (oo) के अन्तर्गत छटनी बतलाते हुए अधिनियम की धारा 25-एफ, 25-जी, 25-एच एवं नियम 77-78 की पालना नहीं किए जाने के कारण निरस्त करते हुए पुनः सभी देय लाभों सहित बहाल किए जाने की प्रार्थना की है।

5. अप्रार्थी नियोजक यूको बैंक के रीजनल मैनेजर द्वारा प्रस्तुत जवाब में स्टेटमेंट ऑफ क्लेम के लगभग सभी महत्वपूर्ण व सारवाण तथ्यों को अस्वीकार किया गया है।

जवाब में अंकित किया गया है कि यूनाइटेड कार्मिशयल बैंक के नाम से वर्तमान में कोई बैंक नहीं होने के कारण रैफरेन्स वर्तमान रूप में चलने योग्य नहीं है और स्टेटमेंट ऑफ क्लेम में बनाए गए पक्षकारण विवाद से भिन्न हैं। भुजिया बाजार शाखा व गंगाशहर शाखा भिन्न-भिन्न शाखाएं हैं और गंगाशहर शाखा भुजिया बाजार शाखा के अधीन नहीं है और न ही भुजिया बाजार शाखा को गंगाशहर शाखा में भेजने का अधिकार है।

अप्रार्थी संस्थान का उद्योग होने को और प्रार्थी व अप्रार्थी के मध्य कर्मकार व नियोजक के सम्बन्ध होने को अस्वीकार करते हुए प्रार्थी के क्लेम को अस्पष्ट बतलाते हुए यह अंकित किया है कि निश्चित अवधि में निश्चित कार्य करने के ठेके के मामले में छटनी का प्रावधान लागू नहीं होते हैं। अतिरिक्त कथनों में यह भी अंकित किया है कि प्रार्थी ने तथ्य छुपाया है कि उसने जब-जब भी पानी भरने के ठेका लिया उसको भुगतान कर दिया गया था इसीलिए उसने कार्य विवरण जानबूझकर समझौता अधिकारी के यहाँ प्रस्तुत नहीं किया। प्रार्थी अप्रार्थीगण के नियोजन में कभी नहीं रहा बल्कि इसने पानी का पानी भरने के कार्य के हिसाब से ठेका लिया था जिस अवधि का ठेका लेता और वह अवधि समाप्त होने पर भुगतान ले जाता था उसने यूको बैंक में कभी भी नियमित कार्य नहीं किया। ठेका सम्बन्धित प्रार्थी द्वारा प्राप्त किये गये भुगतान का विवरण जवाब के पैरा सं. 18 में अंकित करते हुए यह कथन किया गया है कि प्रार्थी पर न तो समय की पाबन्दी थी कि कब आये व कब पानी भरे और कब वापिस जाये और ना ही यह आवश्यक था कि वह स्वयं पानी भरे या किसी अन्य से भरवाए, कभी वह स्वयं करता और कभी किसी अन्य को पानी भरने भेज देता था, वह स्वच्छ हाथों से न्यायालय के समक्ष नहीं आया है। कपिल देव के भाई का नाम रामदेव है उसने भी कुछ अवधि में ठेका लिया था जिसका भुगतान उसे कार्य के मुताबिक किया है। कपिल देव के कार्य का रामदेव के कार्य से कोई सम्बन्ध नहीं है। यूको बैंक

एक संस्थान है जिसमें केन्द्रीय सरकार व पब्लिक एटलार्ज का पैसा है, शाखा प्रबन्धक को नियोजन का कोई अधिकार नहीं है। प्रार्थी ने मात्र पानी भरने का कार्य किया है जिसमें 15-20 मिनट या आधा घण्टा से भी अधिक कभी भी नहीं लगा और पीने का पानी भरने के लिए स्थाई पद होना या स्थाई पद पर नियुक्ति करना सभी बातें अर्थात् और असंभव हैं, प्रार्थी के कार्य की नेचर सही अर्थ में टेम्प्रेरी की श्रेणी में नहीं आता है और प्रार्थी ने 1-8-96 के बाद कभी पानी का ठेका भी नहीं लिया और अन्यत्र आर्थिक अर्जन में व्यस्त था, लोगों के भड़काने से उसने 1998 में दो वर्ष बाद मुकदमा किया है। यह भी अंकित किया गया है कि डिविजनल मैनेजर के नाम से न तो कोई पद है न ही केन्द्रीय सरकार द्वारा भेजे गये रैफरेन्स में डिविजनल मैनेजर शाखा प्रबन्धक या भुजिया बाजार या गंगाशहर शाखा पक्षकार है, गंगाशहर शाखा ने भी कभी कपिल देव को नियोजित नहीं किया और न ही शाखा प्रबन्धक को नियोजन के अधिकार हैं और न ही प्रार्थी को 1-8-96 को निकाला। कुल मिलाकर स्टेटमेंट ऑफ क्लेम सव्यय निरस्त करने की गई है।

6. पक्षकारों द्वारा प्रस्तुत साक्ष्य के दौरान स्वयं श्रमिक कपिल देव ओझा ने अपना शपथपत्र पेश किया है जिसके खण्डन में अप्रार्थी पक्ष की ओर से एम. डब्ल्यू. 1 विरेन्द्र कुमार कपूर व एम. डब्ल्यू. 2 मदनलाल के शपथपत्र प्रस्तुत किये गये हैं। एक-दूसरे पक्ष द्वारा प्रत्येक साक्षी से जिरह भी की गई है।

7. पक्षकारों की बहस सुनी गई। दौरान बहस विद्वान अधिवक्ता अप्रार्थी नियोजक पक्ष का कथन है कि श्रमिक को कोई स्थाई रूप से स्वीकृत चतुर्थ श्रेणी कर्मचारी के रिक्त पद पर नियुक्ति नहीं दी गयी थी। नियुक्ति देने का कोई अधिकार ब्रांच मैनेजर को नहीं है बल्कि नियमित प्रक्रिया से ही नियुक्ति दी जा सकती है जिसके अनुरूप इस कर्मचारी को स्थाई रूप से नियुक्ति नहीं दी गई थी। बल्कि इसे पार्ट टाइम पर पानी का ठेका दिया गया था जिसके बाबत यह कभी कभी एक-दो घण्टे आता था। श्रमिक कपिलदेव डब्ल्यू. डब्ल्यू. 1 ने स्वयं अपनी जिरह में स्वीकार किया है कि उसके पास कोई नियुक्ति आदेश नहीं है। नियोजक पक्ष के साक्षी एम. डब्ल्यू. 1 और 2 की साक्ष्य से स्पष्ट है कि श्रमिक ने 240 दिन पूर्ण नहीं किए, पेमेण्ट रजिस्टर से इसकी पुष्टि होती है। रामदेव के नाम से इसे भुगतान किया जाता हो तथा रामदेव के नाम से प्रार्थी को भुगतान किए जाने का प्रार्थी श्रमिक कथन गलत है। गंगाशहर ब्रांच में प्रार्थी को स्थानान्तरण पर भेजने का कथन गलत है कोई स्थानान्तरण आदेश भी पेश नहीं किया गया है। अप्रार्थी पक्ष द्वारा अपने पक्ष में निम्न न्यायिक दृष्टान्त प्रस्तुत किए गए हैं :-

1. P. R. Nair & Ors Vs. Union of India & Anr. 2008 I CLR 377 (Bombay)
2. Girdhar Gopal Saini Vs. Industrial Tribunal & Ors. 2002 II CLR 1043
3. Ashwani Kumar Vs. State of Bihar 1997 (6) Supreme 66
4. Secretary, State of Karnataka and others

Vs.

Umadevi and others
Civil Appeal No. 3595-3612 of 1999
(Decided by Supreme Court on 10-4-2006)

5. Suresh Chander Vs. General Manager Raj State Bridge & Construction Corporation
RLW (Raj) I (2003) 281

6. Union of India Vs. D. Chakradhar
2002 I CLR 975 (SC)

7. Bank of Baroda, Kota

Vs.

Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Kota and another
2010 (3) LLN 316 (Raj)

इसके विपरीत प्रार्थी श्रमिक के विद्वान अधिवक्ता का दौरान बहस यह कथन था कि पानी का ठेका दिए जाने के सम्बन्ध में कोई दस्तावेज पेश नहीं किए गए हैं, न्यायालय के आदेश 23-10-2001 के अनुसार कोई वाउचर भी पेश नहीं किए गए हैं और न ही कोई कैश बुक पेश की गई है। श्रमिक ने दिनांक 4-6-2002 को तीन वाउचर और पेश किए थे, गंगाशहर ब्रांच का रिकार्ड पेश नहीं किया गया है। हाजरी रजिस्टर प्रदर्श-17 में स्थाई कर्मचारी के रूप में श्रमिक का नाम अंकित है। श्रमिक ने 240 दिन निरन्तर कार्य किया अथवा नहीं-यह प्रमाणित करने का भार श्रमिक पर नहीं है अपितु नियोजक पर है। विद्वान अधिवक्ता श्रमिक पक्ष द्वारा अपने पक्ष समर्थन में निम्न न्यायिक दृष्टान्त पेश किये गये हैं :-

(1) Management of Aurofood Pvt. Ltd. Vs. S. Rajulu 2008 (2) SCT 765 (S.C.)

(2) Director Fisheries Terminal Division

Vs.

Bhikhubhai Meghajibhai Chavda
2010 (3) RLW 2143 (SC)

8. हमारे समक्ष लंबित इस प्रसंग के निस्तारण हेतु प्रमुख रूप से विचारणीय प्रश्न यही है कि :-

क्या प्रार्थी श्रमिक कपिल देव को प्रबन्धतंत्र यूको बैंक जोधपुर व बीकानेर द्वारा सेवा पृथक करना उचित था और यदि नहीं तो प्रार्थी श्रमिक किया राहत किस दिनांक से प्राप्त करने का अधिकारी है ?

9. प्रस्तुत प्रकरण में प्रार्थी श्रमिक कपिल देव ने अपनी साक्ष्य के दौरान प्रस्तुत स्वयं के शपथपत्र में स्टेटमेंट ऑफ क्लेम के अन्तर्गत वर्णित तथ्यों की पुनरावर्ती करने हुए दिनांक 6-4-1989 से स्वयं को शाखा प्रबन्धक यूको बैंक सिटी ब्रांच बीकानेर द्वारा चतुर्थ श्रेणी के रिक्त पद पर नियुक्त किया था। प्रार्थी ने स्वयं से चतुर्थ कर्मचारी के पद पर पानी भरने, फाईल्स टेबल से दूसरी टेबल तक पहुँचाने, वाउचर्स को एक जगह से दूसरी जगह पहुँचाने, नगद रुपयों की गड़्डी सिलाई करने, शाखा कार्यालय से मुख्य शाखा के ईएम रोड में क्लेरिंग लाने-ले जाने, वाउचर्स सिलाई करने, सप्लीमेण्टरी लिखाई

करने तथा कभी-कभी बेलेन्स बुक में बेलेन्स उतारने का कार्य करवाए जाने का कथन किया है। इसने स्वयं द्वारा किए गए उक्त समस्त कार्यों की पुष्टि अप्राथी बैंक के अभिलेख यथा वाउचर्स, टोकनबुक, पेमेण्ट रजिस्टर, कैश बुक, सप्लीमेंटरी रजिस्टर, पीओन बुक एवं दफ्तरी वाउचर्स रजिस्टर से की जा सकने का कथन करते हुए यह भी बताया है कि ये सभी अप्राथीगण बैंक के कब्जे में हैं जिनको बैंक द्वारा जानबूझ कर न्यायालय में प्रस्तुत नहीं किया गया है। इसने स्वयं द्वारा दिनांक 6-4-89 से 31-7-96 तक बिना किसी व्यावधान के निरन्तर कार्य करने व दिनांक 1-8-96 को अप्राथी संख्या 2 के शाखा प्रबन्धक श्री सिंघल द्वारा मौखिक आदेश से सेवा मुक्त करना कथन करते हुए माह सितंबर व अक्टूबर 1995 में अप्राथी संख्या 2 द्वारा ही अप्राथी संख्या 3 गंगाशहर शाखा में कार्य करने हेतु भेजा जाने का भी कथन किया है। इसने अपनी साक्ष्य के दौरान प्रदर्श डब्ल्यू.1 अन्तर बैंक क्रिकेट टूर्नामेंट में युको बैंक की टीम के सदस्य के रूप में भाग लेने का प्रमाण-पत्र व असफल समझौता वार्ता प्रतिवेदन प्रदर्श डब्ल्यू. 2 को प्रदर्शित किया है और यह भी कथन किया है कि उसे निरन्तर बैंक द्वारा वाउचर्स पर भुगतान किया जाता था परन्तु कभी-कभी उसे रामदेव के नाम से वाउचर्स बनाकर व उससे रामदेव के नाम से हस्ताक्षर करवाकर भुगतान किया जाता था।

10. खण्डन में अप्राथी पक्ष की ओर से प्रस्तुत साक्ष्य के दौरान साक्षीगण विरेन्द्र कुमार कपूर तत्कालीन शाखा प्रबन्धक-यूकों बैंक शहर शाखा बीकानेर तथा मदनलाल वरिष्ठ शाखा प्रबन्धक के शपथपत्र पेश किए गए हैं। नियोजक साक्षी विरेन्द्र कुमार कपूर का शपथपत्र पर अपनी मुख्य परीक्षा में कथन है कि प्राथी कपिल देव को युनाईटेड कामर्सियल बैंक में कभी भी स्थाई स्वीकृत चतुर्थ श्रेणी कर्मचारी के पद पर दिनांक 6-4-1989 को नियुक्त नहीं किया गया न ही कपिल देव ने दिनांक 6-4-89 से निरन्तर कार्य किया और दिनांक 1-8-96 को या कभी भी छंटनी नहीं किया। इसके अनुसार कपिल देव ने निश्चित अवधि पर निश्चित कार्य के लिए ही आवश्यकता होने पर कार्य किया था। इसका कथन है कि युको बैंक भुजिया बाजार शाखा व गंगाशहर शाखा अलग-अलग शाखाएं हैं एवं एक शाखा से दूसरी शाखा में ट्रांसफर या भेजने का अधिकार शाखा प्रबन्धक को नहीं है और गंगाशहर शाखा कभी भी भुजिया बाजार शाखा के अधीन नहीं रही और कपिल देव को कभी भी रामदेव या अन्य किसी के नाम से भुगतान नहीं किया गया। कपिल देव व बैंक के मध्य कभी भी कर्मकार व नियोजक के सम्बन्ध नहीं रहे। राष्ट्रीयकृत बैंक जिसमें युको बैंक भी सम्मिलित है शाखा प्रबन्धक को कर्मचारी नियुक्त करने का अधिकार नहीं है। बैंक में डिविजनल मैनेजर के नाम से कोई पद नहीं है। इसने साक्ष्य के दौरान प्रदर्श एम-1 से 40 तक के दस्तावेजात पेश करते हुए कथन किया है कि कपिल देव उनके यहाँ कभी नियोजित कर्मचारी नहीं रहा। जिरह में इसने यह बताया है कि जवाब दावे में ठेके पर काम करवाने का तथ्य गलत नहीं लिखा है।

अन्य नियोजक साक्षी मदनलाल ने साक्ष्य के दौरान प्रस्तुत अपने शपथपत्र में अप्राथी बैंक में नियोजन की प्रक्रिया बतलाते हुए यह कथन किया है कि शाखा प्रबन्धक के स्तर पर नियुक्ति के अधिकार नहीं दिए हुए हैं, कार्य को देखते हुए बैंक पद क्रिएट करता

है, नियोजन कार्यालय से नाम मांगे जाते हैं, सलेक्शन बोर्ड का गठन होता है और निश्चित तिथि तक प्रार्थना-पत्रों के प्राप्त होने के बाद सलेक्शन बोर्ड द्वारा चयनित व्यक्तियों का पदस्थापन सक्षम व्यक्ति करता है।

11. उक्त सभी न्यायिक दृष्टान्तों का आदर सहित अध्ययन किया गया। मैं प्राथी के अभिभाषक के उक्त तर्क से सहमत नहीं हूँ क्योंकि प्राथी श्रमिक ने ऐसी कोई सारवान साक्ष्य पेश नहीं की है जिससे प्राथी श्रमिक को अप्राथी बैंक के नियोजन में स्थाई व स्वीकृत चतुर्थ श्रेणी कर्मचारी के पद पर नियुक्त किया गया हो, यदि प्राथी को स्थाई रूप से नियुक्ति दी जाती तो उसके स्वयं के पास अवश्य ही नियुक्ति आदेश होना चाहिए था। प्राथी ने स्वयं को रामदेव के नाम से भुगतान करने व रामदेव के नाम से हस्ताक्षर करने का कथन भी किया है। अगर कोई चतुर्थ श्रेणी कर्मचारी नियुक्त है तब उससे दूसरे के नाम से बनाए गए वाउचर पर हस्ताक्षर करवाकर कोई भुगतान क्यों करेगा। प्राथी श्रमिक कपिल देव द्वारा प्रस्तुत अपने शपथपत्र में पैरा संख्या 2 में स्वयं द्वारा किए जाने वाले कार्यों का उल्लेख किया है और न्यायालय के समक्ष जिरह के दौरान उसने यह कहा है कि :-

“मैं हिन्दी थोड़ा बहुत पढ़ना जानता हूँ और अंग्रेजी पढ़ना लिखना नहीं जानता हूँ। उसे मैनेजर साहब ने बतला रखा था कि पियोनबुक कौनसी है, क्लेरिंग बुक कौनसी है इसलिए मैं उनमें कागजात रख देता था।”

आगे जिरह में ही कहता है कि प्रदर्श एम-17 रजिस्टर किसका है प्रदर्श एम-17 रजिस्टर में मेरा नाम व हस्ताक्षर नहीं है।

अतः प्राथी श्रमिक की इस साक्ष्य पर विश्वास नहीं किया जा सकता और ना ही यह उम्मीद की जा सकती है कि उससे रिकार्ड में इन्द्राज का कार्य ले लेते थे। श्रमिक ने जिरह में यह स्वीकार भी किया है कि उसकी तो हाजरी ही नहीं लगती थी। अप्राथी बैंक में स्वयं की नियुक्ति होने का आदेश, लगातार काम करने का कोई प्रमाण-पत्र उसके पास नहीं है एवं गंगाशहर शाखा में कथित रूप से हुए स्थानान्तरण अथवा वहाँ किसी चतुर्थ श्रेणी के कर्मचारी के अवकाश पर रहने के दौरान कार्य पर माह सितंबर व अक्टूबर 1995 में कार्य करने हेतु गंगाशहर भेजने के सम्बन्ध में भी किए गए अपने मौखिक कथन के सम्बन्ध में कोई भी दस्तावेज पेश नहीं किया है क्योंकि अगर कोई स्थानान्तरण किया होता तो स्वयं श्रमिक के पास स्थानान्तरण आदेश अवश्य ही होता। इन परिस्थितियों में 240 दिन पूर्ण कर लेने के कथन को प्रमाणित करने का दायित्व अप्राथी नियोजक पर परिवर्तित नहीं होता है। तथ्यों की भिन्नता के कारण “B.M. Chavda” के उक्त न्यायिक दृष्टान्त में माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित इस सिद्धान्त का लाभ श्रमिक पक्ष को दिया जाना उचित एवं न्यायसंगत नहीं है कि वाञ्छित अवधि में श्रमिक द्वारा 240 दिवस कार्य पूर्ण नहीं किए जाने का तथ्य साबित करवाने का भार नियोजक पर है।

12. पूर्वगामी विवेचन के आधार पर प्राथी श्रमिक यह प्रमाणित करवाने में पूर्णतया विफल रहा है कि उसने अप्राथी बैंक में चतुर्थ

श्रेणी के स्थाई, स्वीकृत व रिक्त पद के विरुद्ध नियुक्त होकर एक कलेण्डर वर्ष में 240 दिन अथवा 240 दिन से अधिक कार्य किया है। प्रदर्श डब्ल्यू। प्रमाण-पत्र क्रिकेट प्रतियोगिता से सम्बन्धित है जो अप्राथी बैंक द्वारा जारी किया हुआ नहीं है। पत्रावली पर अप्राथी बैंक की ओर से प्रस्तुत दस्तावेजात प्रदर्श -एम। से 16 तक के वाउचर, हाजरी रजिस्टर प्रदर्श एम. 17 एवं वाउचर चार्ज रजिस्टर प्रदर्श एम-18 से 40 के अवलोकन से यह पूर्णतया प्रमाणित है कि प्राथी कपिल देव को मात्र पानी भरने जैसे विविध आकस्मिक कार्यों के लिए ही भुगतान किया गया है, इनके आधार पर प्राथी कपिल देव को अप्राथी बैंक में नियमित स्थाई अथवा अस्थायी रूप से नियोजित हो कर श्रमिक के रूप में कार्य करना नहीं माना जा सकता है और प्राथी व अप्राथी बैंक के मध्य कर्मकार व नियोजक का सम्बन्ध होना एवं यूको बैंक के प्रबन्धतंत्र द्वारा प्राथी कपिल देव को सेवापुथक करना भी नहीं माना जा सकता है।

13. ऊपर किए गए समग्र विवेचन के प्रकाश में केन्द्र सरकार द्वारा प्रेषित विचाराधीन प्रश्न को उत्तरित करते हुए निम्न पंचाट पारित किया जाता है :—

पंचाट

प्राथी श्रमिक यह प्रमाणित करवाने में पूर्णतया विफल रहा है कि उसने अप्राथी बैंक में चतुर्थ श्रेणी के स्थाई, स्वीकृत व रिक्त पद के विरुद्ध नियुक्त होकर एक कलेण्डर वर्ष में 240 दिन अथवा 240 दिन से अधिक निरन्तर कार्य किया है। प्राथी व अप्राथी बैंक के मध्य कर्मकार व नियोजक का सम्बन्ध होना एवं यूको बैंक के प्रबन्धतंत्र द्वारा प्राथी कपिल देव को सेवापुथक करना भी प्रमाणित नहीं होता है। लिहाजा प्राथी कोई राहत व राशि पाने का अधिकारी नहीं है।

14. उक्त अधिनिर्णय अधिनियम की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ केन्द्र सरकार को भेजा जावे।

15. अधिनिर्णय दिनांक 27-12-2011 को विवृत न्यायालय में भेरे द्वारा लिखाया जाकर सुनाया गया तथा हस्ताक्षरित किया गया।

रमेश चन्द्र पारीक, न्यायाधीश

नई दिल्ली, 21 अगस्त, 2012

क्र.अ. 2837.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 27/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8-8-2012 को प्राप्त हुआ था।

[सं. एल-12012/56/2005-आई आर (बी-II)]

शीश राम, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S.O. 2837.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2005)

of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 8-8-2012.

[No. L-12012/56/2005-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 27 of 2005

Between

Sri Ram Narain Gupta, son of Sri Gaya Prasad Gupta, 119, Kalloo Kuwan, Near S.M. Montessori School District Banda

And

The Senior Regional Manager, Punjab National Bank, Regional Office, Kanpur Road, Jhansi.

AWARD

1. Central Government, MoL, New Delhi, vide notification no. L-12012/56/2005-IR-B-II dated 9-8-05, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the Punjab National Bank Regional Office, Jhansi in imposing punishment of dismissal without notice upon the workman as per the order dated 29-4-2004 is proper and justified? If not to what relief the workman concerned is entitled to?

3. Brief facts of the case are—

4. That the claimant was appointed on 22-3-82, as a clerk-cum-cashier at Shikohabad Branch. On 19-3-2001, he was working as Special Assistant after promotion at Gursari Branch in District Jhansi. That he has been an active member of trade union due to which the opposite party was having animosity against him.

5. There was a saving bank account no. 8462 of Smt. Kanchan Devi at Banda Branch. The management levelled the charges against him that Smt. Kanchan Devi has complained against him that he had withdrawn huge amount at different dates from her account with a view to defraud her account and to mis-utilized the amount received from the said account, whereas she has never made any complaint on this. The management has suspended him. Against the suspension the claimant filed a writ before the Hon'ble High Court wherein the suspension order was stayed. Even thereafter the management served a charge

sheet dated 27-6-02 upon him. The claimant has filed copy of the charge sheet denying all the allegations.

6. It is alleged that different inquiry officers were changed when they did not submit the report. In the end Sri D K Yadav was appointed inquiry officer who submitted his report before the disciplinary authority which is without any evidence documentary or oral and against the principle of natural justice as well as governing the rules disciplinary action.

7. It is alleged that four witnesses were produced by the management. The evidence adduced by the witnesses does not establish any charge against the delinquent employee.

8. It is also alleged that proper opportunity has not been granted to him to produce his defense. It is alleged that his services have been terminated on the basis of defective inquiry by not following the principles of natural justice and after giving perverse findings.

9. It is also alleged that his appeal was also dismissed with a closed mind by the appellate authority.

10. Therefore, on the basis of the above it has been prayed that the action of the management be declared as unjustified and illegal and he be reinstated in the service of the bank with full back wages and all consequential benefits.

11. Opposite party has filed the written statement along with preliminary objection. They have denied the allegation of the claimant. It is stated that an-authorized withdrawals and subsequent deposits of like amount had taken place in CBE Account no. 0462 of Account holder Smt. Kamlesh Devi. These came to light through her complaints. Thereafter a charge sheet was served upon the CBE. The charges were found to have been proved by the enquiry officer against the delinquent employee, consequently agreeing with the findings of the enquiry officer the disciplinary authority imposed punishment of dismissal without notice.

12. It is alleged that the charges levelled against him were found proved by the inquiry officer on the basis of findings, the inquiry officer has followed the rules and principles of natural justice and given all opportunity to the claimant. It is alleged that before imposing the final order of gross penalty the claimant was given opportunity of personal hearing on 27-4-2004, which was attended. The appellate authority has also given him opportunity of hearing therefore, there is no force in the allegation of the claimant and the claim of the claimant is liable to be dismissed.

13. Both the parties have led oral as well as documentary evidence.

14. Heard and perused the whole record.

15. It is contended and argued by the representative

of the workman that it is a case of no evidence or the inquiry officer has given perverse finding. He has given the finding on the basis of such evidence, which is not in existence. He has also challenged that no dismissal notice issued to him before passing major penalty of dismissal. He has challenged the preliminary inquiry.

16. In this case the authorized representative for the opposite party has argued and prayed that whatever evidence was in their possession as oral evidence they have produced them and the remaining evidence may be considered which was produced before the inquiry officer to establish the charges in case it is found that the finding of the inquiry officer was perverse and inquiry is found vitiated. To this contention an objection has been raised by the workman's side.

17. Therefore, in such situation, a situation has arisen where I have to examine the evidence adduced by the opposite party to establish the charges in the tribunal as well as adduced before the inquiry officer.

18. Here I would like to produce some of the charges which were levelled against the CBE vide Charge sheet dated 27-6-02.

19. First charge is that you, posting clerk-cum-cashier at BO Branch while officiating as officer on various dates you made payments of following withdrawal from SF Account no. 0462 of Smt. Kamlesh Devi without verifying the signature of account holder on withdrawals slips which do not carry specimen signature of account holder. The said payments were made to the account holder and you misappropriated the amount for self. The following payments withdrawals mentioned in serial no. 1 to 15 right from date 21-10-93 to 18-9-98 and the total amount has been shown as Rs. 76,000 has not been entered in the pass book of the account holder.

20. Second charge is to cover up the above payments you deposited Rs. 69000 in the above account of Smt. Kamlesh Devi on following date right from 10-12-93 to 16-2-2001 and the amount deposited is right from 7000 like wise and up to 69000 as shown in the charge sheet.

21. There are other charges also viz. charge no. 3 and 4 which may be taken in the end.

22. The opposite party has produced 4 witnesses before the inquiry officer and two witnesses has been produced before the tribunal out of which one is Mohan Parkash Gupta as M.W.1, who is an handwriting expert and M.W.2 is Sri D K Yadav, who is an inquiry officer.

23. Now the authorized representative for the opposite party has contended that the evidence of M.W.1 and the evidence of other witnesses which were produced before the inquiry officer may be examined and considered.

24. Agreeing with his contention I have examined the evidence.

25. First of all I would like to examine the evidence of Smt. Kanchan Devi who was produced, before the inquiry officer and cited there as M.W.2 before the inquiry. She has given her evidence on affidavit before which is document no. 14/33-34. She has clearly stated that she was holding an account SF No. 8462 in the said branch of the bank, but stated on oath that one day the Manager of the branch along with certain employee came to her and took her signature on plain papers stating that there are certain irregularities in her account. She further goes on to submit that on the assurance of the bank officials she gave her signature on some blank papers. Thereafter bank's official came to her repeatedly on the saying to give evidence. She further stated in her affidavit that while going to the bank on 4-2-2003 with the officials of the bank she was informed by the manager of the bank that it is Mr. Ram Narain Gupta, who had removed or committed irregularity in her account and against him she has to depose before the inquiry officer. On coming to know about the above fact she was shocked on the premises that how Sri Ram Narain Gupta could make irregularities in her account. But she informed the bank officials that she will not give her evidence on the line which she is being suggested by the bank officials and thereafter he came to her residence. Yet again the bank officials approached her to depose against the workman. Now she has reiterated the fact that she never made any complaint against Sri Ram Narain Gupta and she was not having any grudge against the delinquent employee.

26. This is the affidavit which has been considered by the inquiry officer by way of examination in chief of Smt. Kanchan Devi Mishra. Going through the contents of this affidavit she has nowhere supported the case of the bank and she never stated that she had given any complaint against the CSE regarding the irregularities committed in her account. If she had given any complaint now it was for the opposite party to have inquired or cross examined this witness that she has tendered the complaints against the CSE. Opposite party has filed 3 complains which are paper no. 14/88-90. These are photocopies. Originals have not been produced. These complaints were never produced before the account holder Smt. Kanchan Devi to show whether any fraud took place in her account to withdraw an amount of Rs. 70000 on different dates by way of fraudulent signatures in her name.

27. I would like to point out here that the witness Smt. Kanchan Devi the account holder was present before the inquiry officer 14-10-2003, after tendering her affidavit in evidence, still the presenting officer did not prefer to cross examine her on the saying that there does not appear any reason for cross examining her.

28. Sri R K Gupta who is a senior manager in the bank has been produced by the bank before the inquiry officer. There are allegations that the CSE has withdrawn the

amount fraudulently through the withdrawal slips of the account holder. When a question was put by the presenting officer to the witness and inquiry from him to see the front and back of the withdrawal form and to state as to whom the amount was paid. He stated that according to the withdrawal slips this amount has been paid to the account holder Smt. Kanchan Devi Mishra.

29. Document MEX - 28 is the teller card / specimen signature of the account holder Smt. Kanchan Devi at the time of opening the account. When a question was put to the witness Sri R K Gupta, whether the signature on the withdrawal slips MEX-31-34 is tallying with the signature on the teller card MEX 28 which belongs to Smt. Kanchan Devi Mishra. He categorically replied that all the signatures are tallying with each other.

30. In my view in such a situation when the witness of the bank who is a very senior officer is clearly admitting that the signatures appearing on the withdrawal slips are tallying with the specimen signature appearing on the teller card of the account holder.

31. The bank's witness Sri R K Gupta, has nowhere stated the fact that these signature appearing on the above documents were made by the CSE with oblique motive.

32. It may also be pointed here that whatever complaints are alleged to have been made by the complainant against the workman on a specific question posed by the defense representative to specify as to whether the signatures on the alleged complaint and the signature on the account opening form teller card are one and same. The witness replied that both the signatures as appearing on the teller card and on the complaints do not tally with each other.

33. Therefore in my view complaints like paper no. 14/88-90 obtained / procured by the branch manager against the CSE appears to be fabricated, even the originals have not been filed by the management before the tribunal.

34. MEX. 46 is a deposit slip of Rs. 7000. It is alleged by the management that the CSE has himself deposited the amount in the account of Smt. Mishra after fraudulently withdrawing the amount himself. When a question was put to M.W.1 who is senior officer in the bank by the defense as well as by the presenting officer on his re-examination, M.W.1, clearly admitted that the signature on MEX. 46 tallies with the original signature of account holder which is existing on MEX. 28. Then in such a situation it is strange that as to how the charges are being levelled against the CSE. If this exercise would have been done by the management before the issuance of charge sheet, this thing would not have happened. It also shows that the enquiry officer has travelled beyond his jurisdiction as he did not consider the evidence which was available on record.

35. I have also considered the evidence of Sri Chaman Lal Agrawal who is also a senior officer in the bank. It is very strange to point out here that M.W.3 has also not levelled or gave any evidence to prove the charge. When a question was put to him that he should see whether the withdrawal forms MEX.31 to 45 and state as to whose signatures are appearing on these documents. He stated the name of Smt. Kanchan Devi Mishra.

36. I have examined the statement of Sri M. P. Gupta, Hand writing expert who was produced as M.W.4 during the inquiry but the management has again produced him before the tribunal as witness M.W.2.

37. I have also examined his statement. During his statement the court has given an observation that the witness is proving the record not on the basis of original documents but on the basis of photocopies which is not permissible. The evidentiary value on the basis of photocopy is nil. This witness has also admitted the fact before this tribunal his original hand writing report is not available.

38. It is also a fact that hand writing expert has never taken the admitted hand writing of the CSE at any point of time to compare the same with the disputed writing of the account holder appearing on the withdrawal slip of deposit slip.

39. Therefore, in view of the aforesaid circumstances, the evidence lead by M.W.1, M.W.3 and M.W.4 does not carry any weight from which the inquiry officer has concluded that the charges are being proved against the CSE on the basis of above evidence.

40. As against the above evidence the workman / charge sheeted employee has produced himself in the witness box before the tribunal and he was thoroughly grilled in his cross examination but the management has palpably failed to bring out any substance from the mouth of the charge sheeted employee so as to establish the charges against him.

41. It is also contended by the representative of the workman that his dismissal from service passed by the management without notice is also illegal. At any rate if the management was of the view not to retain the services based on the enquiry report it was obligatory on the management to have issued a notice to this effect to the workman but in the absence of the same, the dismissal order could not be sustained in the eye of law. On this point of view I am fortified with the law laid down by the Hon'ble Supreme Court of India reported in SCLJ 2009, page 334 in between State Bank of India versus Ranjeet Kumar Chakrowarty where in it has been clearly held that - Where ever the rule is silent, principle of natural justice shall be read in it. It is now settled principle that wherever the rule is silent the principle of natural justice shall be read in it. A hearing should be given to a person who is being punished with a major penalty; therefore, the principle of natural justice has to be read in this rule.

42. The proposition of law laid down in the case cited above apply with full swing to the facts and circumstance of the case in as much as the concerned workman too has not been heard or has been given any notice prior to the passing of final order of dismissal by the disciplinary authority. Therefore, from this point of view also, the action of the opposite party is liable to be set aside being illegal and against the principle of nature justice.

43. Now in the end it is to be examined by the tribunal whether the domestic inquiry conducted by the management against the workman is against the rules of natural justice and that the finding of the inquiry officer in the said inquiry is perverse.

44. Before answering the above point it may be mentioned here that the tribunal is oblivious of the fact that in cases where in a case of dismissal, discharge or termination of the services of the case is referred for adjudication, first of all it will be examined as to whether domestic inquiry conducted by the employer is in accordance with the rules of natural justice. If this issue has not been framed and the parties have adduced evidence in the case before the tribunal then tribunal is bound to consider the evidence in combination i.e. available on the record of the domestic inquiry as well as evidence led before the tribunal by the parties concerned which has been considered as material available on record. If on the analysis of the material available on the record, the tribunal comes at a conclusion that neither the inquiry conducted by management against his employee was fair and proper and also comes at a conclusion that the management has again failed to prove the charges against his employee before the tribunal despite availing of the opportunity to adduce evidence, in such circumstances the tribunal has been left with no other option but to set aside the action of the management.

45. Having concluded that neither the domestic inquiry conducted by the management was fair and proper and also that the finding recorded by the inquiry officer is perverse and even otherwise the management has also failed to prove the charges against the employee before the tribunal, therefore, in any view of the matter the action of the management as referred to in the schedule of reference order cannot be appreciated and therefore is liable to be set aside at the hands of this tribunal.

46. Accordingly it is held that the action of the management as referred to in the reference order is liable to be set aside and the workman is held entitled to be reinstated in the service of the bank with full back wages, seniority and all consequential benefits.

47. Reference is answered accordingly in favour of the workman and against the management.

RAM PARKASH, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

का.आ. 2838.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंजाब नेशनल

बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-II, चंडीगढ़ के पंचाट (संदर्भ संख्या 226/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2012 को प्राप्त हुआ था।

[सं. एल-12011/36/2011-आई आर (बी-II)]

शीरा राम, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S.O. 2838.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No 226/2011) of the Central Government Industrial Tribunal/Labour Court -II, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Punjab National Bank and their workman, which was received by the Central Government on 1-8-2012.

[No. L-12011/36/2011-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, CHANDIGARH

Present: Sri A.K. Rastogi, Presiding Officer

Case No. I. D. No. 226/2011

Registered on 8-12-2011

Sh. F.C. Mittal, PNB Emp., Association (NZ), H.No.184, Sector, 45-A, Chandigarh.

...Petitioner

Versus

The General Manager, HRD, Punjab National Bank, HO-Bhikaji Cama Place, New Delhi.

...Respondents

APPEARANCES

For the workman None.

For the Management Sh. S.C. Negi AR.

AWARD

Passed on June 11, 2012

Central Government vide Notification No. L-12011/36/2011-IR(B-II)) Dated 9-11-2011, by exercising its powers under Section 10 sub-section (1) Clause (d) and sub-section (2-A) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'Act') has referred the following Industrial dispute for adjudication to this Tribunal:—

“Whether the demand of the union (Punjab National Bank Employees Association, Chandigarh) for payment of full time scale of wages to the workman Smt. Ramo Devi, part time Sweeper w.e.f. 1-12-98 to 1-4-10 from the management of General Manager, Punjab National Bank, Chandigarh is just fair and legal? What relief the workman is entitled to?”

After receiving the reference the notices were issued to the parties. The respondent put in its appearance but the claimant did not turn up. Notice sent by registered post to the claimant on 5-3-2012 returned with the postal endorsement that there is no such person available at the given address. As the claimant is not available at the given address, and he has not put in its appearance and filed claim statement hence, service is not possible on him. A 'No Dispute Award' is passed in the case. Let two copies of the Award be sent to Central Government for further necessary action.

ASHOK KUMAR RASTOGI, Presiding Officer

नई दिल्ली, 21 अगस्त, 2012

क्र.आ. 2839.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/168/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 1-8-2012 को प्राप्त हुआ था।

[सं. एल-12012/134/96-आई आर (बी-II)]

शीरा राम, अनुभाग अधिकारी

New Delhi, the 21st August, 2012

S. O. 2839.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT/NGP/168/2000) of the Central Government Industrial Tribunal/Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of UCO Bank and their workman, which was received by the Central Government on 1-8-2012.

[No. L-12012/134/96-IR (B-II)]

SHEESH RAM, Section Officer

ANNEXURE

BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/ 168/2000

Date: 3-5-2012.

Party No.1:

The Divisional Manager, UCO Bank, Divisional Office, 108, Sushil Bhavan, Balraj Marg, Dhantoli, Nagpur-440012.

Versus

Party No. 2 :

Shri Devrao Laxman Mehar, At & Post : Aroli, Tehsil-Mauda, Distt. Nagpur.

AWARD

(Dated : 3rd May, 2012)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of

Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government had referred the industrial dispute between the employers, in relation to the management of UCO Bank and their workman, Shri. Deorao Mehar, for adjudication, to CGIT-cum-Labour Court, Bombay as per letter No. L-12012/134/96-IR (B-II) dated 20-5-97, with the following schedule :—

"Whether the action of the management of UCO Bank, Nagpur in terminating/discontinuing the services of Shri Deorao Laxman Mehar, Casual Labour/Part-time Sweeper at Aroli Branch w.e.f. 24-3-1994 is legal and justified? If not, to what relief the said workman is entitled?"

Subsequently, the case was transferred to this Tribunal for adjudication in accordance with law.

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Deorao Mehar, ("the workman" in short), filed the statement of claim and the management of the UCO Bank ("Party No. 1" in short) filed its written statement.

The case of the workman as projected in the statement of claim is that he came to be appointed as a casual full time sweeper on daily wages with the party no. 1 on 7-3-1992 and was posted to Aroli branch of the Bank and worked continuously till 26-3-1994, without any break and his services were terminated by the Manager of the Branch on 26-3-1994 orally, without any show cause notice or any lawful reason and being aggrieved by the order, he made representations to the Divisional Manager on 30-5-1994 and 15-8-1994, but the same were not considered and the party no. 1 confirmed another employee, who was junior to him and when he made enquiry about the same and claimed for continuance in the Bank, his services were terminated by party no. 1 and he being a confirmed workman, his services should have not been terminated without following the due procedure and holding enquiry as contemplated under the Act and under the Industrial Disputes (Central) Rules, 1957 ("the rule" in short) and as he had completed 240 days of work, termination of his services without compliance of the provisions of section 25-F of the Act is illegal and is liable to be set aside.

The workman has prayed to quash and set aside the oral order of termination dated 26-3-1994 and for his reinstatement in service with continuity and full back wages.

3. The party no.1 in its written statement has pleaded inter-alia that the workman was never appointed as a casual full time sweeper at Aroli branch and the question of service of show cause notice to the workman does not arise, as there was no appointment, service and termination as claimed and the workman was engaged from time to time for doing misc. work, like fetching of water and giving water on "Khus Tatti" and cleaning the premises and he was

paid wages on vouchers for the same and he had never done any duty in the capacity of an employee of the Bank and the Bank have its Recruitment Regulation for appointment of sub staff and due to the ban of recruitment of sub staff, there was no recruitment since 1985 and there was no relationship of employer and employee between it and the workman and the workman had not worked for 240 days and as such, compliance of the provisions of section 25-F of the Act does not arise and the same has no application and the workman is not entitled for any relief.

4. Besides placing reliance on documents, both the parties adduced oral evidence in support of their respective claims. The workman examined himself as a witness. His examination-in-chief is on affidavit. In his examination-in-chief, the workman has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, he has stated that no written order was given to him to work as a casual labour or a full time sweeper and he was paid on vouchers.

One Suryabhan has also been examined as a witness on behalf of the workman. He has stated that the workman worked from 1992 to 1994 in Aroli Branch of the Bank and after working for 653 days, his service was terminated orally. In his cross-examination, the witness has stated that he has no knowledge as to who had engaged the workman and what work he was doing and he came to know from the workman himself about the removal from service. According to this witness, he has a passbook in the handwriting of the workman mentioning the withdrawals and deposits in the same. The workman himself has not claimed such a fact either in the statement of claim or in his evidence on affidavit. Hence, the evidence of the witness cannot be believed.

5. One Bhardwaj has been examined as a witness by party no.1. He has reiterated the facts mentioned in the written statement, in his evidence, which is also on affidavit. His evidence has remained unchallenged, as nobody appeared on behalf of the workman to cross-examine him.

6. It is necessary to mention here that as the workman did not appear in the case, order was passed to proceed with the case ex-parte against him on 22-11-2011.

7. In view of the stands taken by the parties, I think it necessary to mention the principles enunciated by the Hon'ble Apex Court in this regard, before embarking upon the discussion of the merit of the case.

The Hon'ble Apex Court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. Their workmen) have held that :—

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240

days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25 B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

In the decision reported in AIR 1981 SC-1253 (Mehar Lal Vs. M/s. Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

"Industrial Disputes Act, 1947 (14 of 1947). Section 25- B (1) and (2)- Continuous service- Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service).

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that Section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of Section 25-B and Chapter V-A".

The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that:

"Industrial Disputes Act, 1947 (14 of 1947)- S. 25-F, 10- Retrenchment compensation-Termination

of services without payment of -Dispute referred to Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding his termination-Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination."

So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary to prove that the workman worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman.

8. The present case at hand is now to be considered with the touch stone of the principles enunciated by the Hon'ble Apex Court and it is to be found out, if the workman has been able to prove that he had in fact worked at least for 240 days in a year preceding his termination. According to the workman, his services were orally terminated on 26-3-1994. So, it is necessary for the workman to prove that in the preceding twelve calendar months of 26-3-1994, he had worked for 240 days.

9. The workman has filed some documents in support of his claim. The documents filed by the workman do not show that he had worked for 240 days in the preceding 12 months of 26-3-1994. On the other hand, the documents filed by the party no. 1 and the unchallenged evidence of the witness of party no. 1 show that the workman did not work for 240 days in the preceding 12 months of 26-3-1994.

As the workman has failed to satisfy the eligibility qualifications prescribed in Section 25- F read with Section 25-B of the Act, the provisions of Section 25-F are not applicable to his case and as such, he is not entitled to any relief.

ORDER

The action of the management of UCO Bank, Nagpur in terminating/discontinuing the services of Shri Deorao Laxman Mehar, Casual Labour/Part time Sweeper at Aroli Branch w.e.f. 24-3-1994 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer